

Table of Contents

Agenda	3
IV-1. Public Hearing and Approval of a Façade Improvement Project – 143 N. Rock Island. (District VI)	
Agenda Report No. IV-1.	10
Ordinance No. 49-767	12
Facade Easement.	16
IV-2. Petition and Change Order for Emergency Water Line Installation in West Wichita. (Districts IV and V)	
Agenda Report No. IV-2.	23
Resolution No. 14-172	26
Supporting Documents	28
citizen letter rolling hills	36
VII-1. Food and Beverage Concession and Lease Agreement - New Terminal - Wichita Mid-Continent Airport.	
Agenda Report No. VII-1	37
Concessions Agreement.	39
II-1. Report of Board of Bids and Contracts dated June 16, 2014.	
Agenda Report No. II-1	117
II-3. Preliminary Estimates.	
Agenda Report No. II-3	120
II-4. Deeds and Easements.	
Agenda Report No. II-4	121
II-5a. Community Events - St. Matthew CME Church State Rally. (District I)	
Agenda Report No. II-5a	122
II-5b. Community Events - Bradley Fair Summer Concert. (District I)	
Agenda Report No. II-5b	123
II-5c. Community Events - Glow Run 5K Wichita. (District IV) (PULLED)	
Agenda Report No. II-5c	124
II-5d. Community Event - Kindness Moves Me 5K. (District VI)	
Agenda Report No. II-5d	125
II-5e. Community Events - Waterfront Triathlon. (District II)	
Agenda Report No. II-5e	127
II-5f. Community Events-Head for the Cure 5K. (District VI)	
Agenda Report No. II-5f.	128
II-6a. Design Services Agreement for Stonebridge Second and Third Additions. (District II)	
Agenda Report No. II-6a and Agreement	129
II-6b. North Industrial Corridor (NIC) Groundwater Contamination Project – Professional Services Contract. (Districts I and VI)	
Agenda Report No. II-6b	152

Resolution No. 14-167	161
MNA Scope of Work	163
II-6c. K-96 and Greenwich Interchange – Westar Relocation Agreement. (District II)	
Agenda Report No. II-6c and Agreement	169
II-8. Granicus Live Meeting Management System Upgrade.	
Agenda Report No. II-8	171
City of Wichita IT Agreement - Granicus Executed - June 5 2014.	172
II-9. Pressure and Chlorine Booster Station - Rural Water District No. 1. (District II)	
Agenda Report No. II-9	190
Resolution No. 14-165	191
II-10. Removal of Sidewalk Repair Special Property Tax Assessment 1357 South Broadway. (District III)	
Agenda Report No. II-10 and Ordinance	195
Ordinance No. 49-768.	196
II-11. Change of Trustee, UMB Bank to Security Bank.	
Agenda Report No. II-11	198
Resolution No. 14-166	199
Change of Trustee Didcot L.C.	201
II-12. Second Reading Ordinances.	
Agenda Report No. II-12	203
II-13. *SUB2013-00051 -- Plat of Southern Shores Addition located on the Northwest Corner of Seneca and 55th Street South. (District IV)	
Agenda Report No. II-13	204
Supporting Documents	206
Ordinance No. 49-769.	213
Ordinance No. 49-770.	214
Resolutions Nos. 14-168, 14-169, 14-170, 14-171	215
II-14. *Michael's GSE Repairs, LLC - Commercial Operations Agreement - Wichita Mid-Continent Airport.	
Agenda Report No. II-14	224
Agreement	225

FINAL
CITY COUNCIL
CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. June 17, 2014

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of the regular meeting on June 10, 2014

*****WORKSHOP TO FOLLOW IN THE COUNCIL CHAMBERS*****

AWARDS AND PROCLAMATIONS

- Proclamations:

HOPE Inc. Health Day Fair
Olympic Day
- Service Award:

James E. Cooper
- Award:

Kansas Small Business Person of the Year

I. PUBLIC AGENDA

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

1. Shirley Mansfield - Library and Century II.

II. CONSENT AGENDAS (ITEMS 1 THROUGH 14)

NOTICE: Items listed under the “Consent Agendas” will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the “Consent Agendas” and considered separately

(The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see “ATTACHMENT 1 – CONSENT AGENDA ITEMS” for a listing of all Consent Agenda Items.)

COUNCIL BUSINESS

III. UNFINISHED COUNCIL BUSINESS

None

IV. NEW COUNCIL BUSINESS

1. Public Hearing and Approval of a Façade Improvement Project – 143 N. Rock Island. (District VI)

RECOMMENDED ACTION: Close the public hearing, approve the façade easement and place the maximum assessment ordinance for the 143 North Rock Island facade improvements on first reading.

2. Petition and Change Order for Emergency Water Line Installation in West Wichita. (Districts IV and V)

RECOMMENDED ACTION: Approve the petition and change order, adopt the resolution, and authorize the necessary signatures.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

V. NON-CONSENT PLANNING AGENDA

None

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

VI. NON-CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

VII. NON-CONSENT AIRPORT AGENDA

1. **Food and Beverage Concession and Lease Agreement - New Terminal - Wichita Mid-Continent Airport.**

RECOMMENDED ACTION: Approve the agreement and authorize the necessary signatures.

COUNCIL AGENDA

VIII. COUNCIL MEMBER AGENDA

1. Approval of travel expenses for Council Member Lavonta Williams to attend The National League NBC-LEO 2014 Summer Conference in Rochester, NY, July 30-August 2, 2014.

RECOMMENDED ACTION: Approve the expenditures.

IX. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

Adjournment

(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 14)

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts dated June 16, 2014.

RECOMMENDED ACTION: Receive and file report; approve Contracts;
authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renewal</u>	<u>2014</u>	<u>(Consumption on Premises)</u>
Jimmy Nguyen	Birds on the Roof Restaurant**	550 North Rock Road SU60
<u>Renewal</u>	<u>2014</u>	<u>(Consumption off Premises)</u>
Tommy Ly	KC Gas and Groceries***	1102 West Maple
Kevin Schemm	Dillons #272***	10304 West 13th
Scott F. Duggan	The Fresh Market***	1800 North Rock Road SU120

**General/Restaurant (need 50% or more gross revenue from sale of food)

***Retailer (Grocery stores, convenience stores, etc.)

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates:

RECOMMENDED ACTION: Receive and file.

4. Deeds and Easements:

- a. List of Deeds and Easements.

RECOMMENDED ACTION: Accept documents.

5. Consideration of Street Closures/Uses.

- a. Community Events - St. Matthew CME Church State Rally. (District I)
- b. Community Events - Bradley Fair Summer Concert. (District I)
- c. ***Community Events - Glow Run 5K Wichita. (District IV)***
- d. Community Event - Kindness Moves Me 5K. (District VI)
- e. Community Events - Waterfront Triathlon. (District II)
- f. Community Events-Head for the Cure 5K. (District VI)

RECOMMENDED ACTION: Approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Events Coordinator.

6. Agreements/Contracts:

- a. Design Services Agreement for Stonebridge Second and Third Additions. (District II)
- b. North Industrial Corridor (NIC) Groundwater Contamination Project – Professional Services Contract. (Districts I and VI)
- c. K-96 and Greenwich Interchange – Westar Relocation Agreement. (District II)

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

7. Minutes of Advisory Boards/Commissions

Airport Advisory Board, May 5, 2014
Building Code Standards and Appeals Board, May 5, 2014

RECOMMENDED ACTION: Receive and file.

8. Granicus Live Meeting Management System Upgrade.

RECOMMENDED ACTION: Approve the contract and additional expenses for Granicus Live Meeting Management System Upgrade.

9. Pressure and Chlorine Booster Station - Rural Water District No. 1. (District II)

RECOMMENDED ACTION: Approve the revised budget, waive City Council Policy No. 2 regarding the use of project savings, adopt the amending resolution, and authorize all necessary signatures, including those for the acquisition or granting of easements, utility relocation agreements, and all required permits.

10. Removal of Sidewalk Repair Special Property Tax Assessment 1357 South Broadway. (District III)

RECOMMENDED ACTION: Approve the removal of the \$161 sidewalk repair special property tax assessment for the property at 1357 South Broadway, place the amending ordinance on first reading, and authorize the necessary signatures

11. Change of Trustee, UMB Bank to Security Bank.

RECOMMENDED ACTION: Adopt the Resolution removing UMB Bank as trustee and appointing Security Bank of Kansas City as successor trustee, and authorize the necessary signatures.

12. Second Reading Ordinances: (First Read June 10, 2014)

- a. List of Second Reading Ordinances.

RECOMMENDED ACTION: Adopt the Ordinances.

II. CONSENT PLANNING AGENDA ITEMS

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

13. ***SUB2013-00051 -- Plat of Southern Shores Addition located on the Northwest Corner of Seneca and 55th Street South. (District IV)**

RECOMMENDED ACTION: Approve the documents and plat, authorize the necessary signatures, adopt the Resolutions and place the Ordinances on first reading. Publication of the Ordinances should be withheld until the plat is recorded with the Register of Deeds.

II. CONSENT HOUSING AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

None

II. CONSENT AIRPORT AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

14. ***Michael's GSE Repairs, LLC - Commercial Operations Agreement - Wichita Mid-Continent Airport.**

RECOMMENDED ACTION: Approve the commercial operations agreement and authorize the necessary signatures.

**City of Wichita
City Council Meeting
June 17, 2014**

TO: Mayor and City Council Members

SUBJECT: Public Hearing and Approval of a Façade Improvement Project – 143 N. Rock Island (District VI)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Close the public hearing and place the maximum assessment ordinance on first reading.

Background: Since 2001, the City of Wichita has operated the Façade Improvement Program, which provides low-cost loans and grants to enhance the visual aesthetics of buildings located in defined areas needing revitalization, including the City’s core area. The low-cost loans are funded through special assessment financing. In 2009, the Façade Improvement Program was revised to require that private funding for overall project costs be at least equal to public funding and that applicants show a financial need for public assistance in order to complete the project, based on the owner’s ability to finance the project and assuming a market-based return on investment.

On June 3, 2014, the City Council accepted a petition to create a special assessment benefit district for a building located at 143 North Rock Island and adopted a resolution authorizing façade improvements as part of a larger renovation project, and setting a public hearing on the project for June 17, 2014. Adoption of a maximum assessment ordinance is needed in order to proceed with the façade improvement project.

Analysis: The project is part of the acquisition and rehabilitation of 143 North Rock Island in Old Town. The overall project includes a \$2,500,000 acquisition and renovation, including extensive interior and exterior improvements to the building. The overall project includes converting the first floor into retail space and the upper two stories to apartments. The \$180,000 facade project will include tuck-pointing the brick, new windows and doors, and additional work to restore the building and meet ADA requirements. The Office of Urban Development has reviewed the economic (“gap”) analysis of the project and determined a financial need for incentives based on the current market.

State law requires a formal public hearing to levy assessments for special assessment benefit districts. By using a maximum assessment ordinance, the City levies the assessments in advance of the improvements being constructed, which protects the City from a protest petition should the building change ownership during the construction period. Once the construction is complete and final costs are known, including financing costs, the assessment ordinance will be amended to reflect the actual costs, which will be lower than the original maximum amount.

The City’s Façade Program Policy requires developers to provide the City with acceptable surety, such as a letter of credit, to ensure that the City will be reimbursed for any façade expenditures in the event the City cannot levy special assessment taxes on the improved property. In this case, in lieu of a letter of credit, the property owner will pay the construction costs until the façade project is complete and special assessments can be placed on the property. Once the project is complete, as evidenced by an architect’s certificate of completion, the City will reimburse the property owner for documented eligible façade costs. Once special assessment bonds are issued, the City’s risk will be partially secured by a tax lien on the property.

Financial Considerations: The proposed maximum assessment amount is \$180,000, based on the following uses of funds:

Façade improvement costs	\$156,034
2% City administrative fee	2,837
Façade Improvement Grant	(20,000)
Financing costs	<u>21,129</u>
Maximum Assessment	160,000

The façade improvement costs include a 10% contingency amount to cover any unexpected expense, in order to avoid the possible need to increase the maximum assessment. The actual amount to be assessed to the property, not to exceed \$160,000, will be based on a final statement of costs following completion of construction and will be financed with 15-year special assessment general obligation bonds. Included in the financing costs will be a contingency reserve equivalent to one year's debt service to mitigate risk. Any unused reserve will be used to make the final special assessment payment in year 15.

The Façade Improvement Program provides for a \$10,000 grant for a mid-block building or \$30,000 grant for corner buildings. The developer is requesting a \$20,000 grant as part of the project, \$10,000 per street facing façade. The building is unique in that the east and west facades face a street (Rock Island to the east and Mead to the west). The balance of the grant funding allocated by the City Council for the Façade Improvement Program is \$221,000. With the approval of the \$20,000 grant for this project, \$201,000 will be available for future projects.

Legal Considerations: The attached Maximum Assessment Ordinance and Façade Easement have been approved as to form by the Law Department. State statutes provide the City Council authority to use special assessment funding for the project. A public hearing is required as part of the approval process. The actual amount to be assessed at the completion of construction may be less, but it may not exceed the amounts included in the petition, resolution and ordinance.

Recommendation/Action: It is recommended that the City Council close the public hearing, approve the façade easement and place the maximum assessment ordinance for the 143 North Rock Island façade improvements on first reading.

Attachments: Maximum Assessment Ordinance
Façade Easement

ORDINANCE NO. 49-767 028001

AN ORDINANCE LEVYING AND ASSESSING MAXIMUM SPECIAL ASSESSMENTS ON CERTAIN LOTS, PIECES AND PARCELS OF PROPERTY LIABLE FOR SUCH SPECIAL ASSESSMENTS TO PAY THE COSTS OF INTERNAL IMPROVEMENTS IN THE CITY OF WICHITA, KANSAS (FAÇADE IMPROVEMENTS –143 NORTH ROCK ISLAND IMPROVEMENT DISTRICT).

WHEREAS, pursuant to Resolution No. 14-149 (the “Resolution”), the City Council (the “Governing Body”) of the City of Wichita, Kansas (the “City”) has authorized, pursuant to K.S.A. 12-6a01 *et seq.* (the “Act”) the creation of an improvement district (the “Improvement District”) and the construction of the following improvements therein:

Construction of improvements to area walls on public ways or land abutting thereto consisting of façade improvements (the "Improvements"); and

WHEREAS, prior to commencement of construction of the Improvements, the City has determined the maximum amount of assessment against each lot, piece or parcel of land deemed to be benefited by the Improvements based on the approved estimate of cost of the Improvements and has held a public hearing on the proposed maximum special assessments to be levied against property in the Improvement District for the cost of the Improvements after providing notice of such hearing as required by the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Levy of Assessments. Pursuant to the Act, special assessments to pay the costs of the Improvements are hereby levied and assessed the amounts against the lots, pieces and parcels of land liable therefore as described on *Exhibit A* to this Ordinance, which is incorporated herein by reference; provided, however, that if the final cost of the completed Improvements is less than the maximum amount of the assessments set forth on *Exhibit A*, the Governing Body shall adjust the assessments to reflect the cost of the completed Improvements. If any property owner elects to prepay the maximum assessment as provided in *Section 2* and the final cost of the completed Improvements as determined by the Governing Body is less than the estimated cost of the Improvements used to determine the maximum assessments, the City Clerk shall mail a check to the then current owner of the property for the difference.

Section 2. Payment of Assessments. The amounts so levied and assessed in *Section 1* shall be due and payable from and after the date of publication of this Ordinance; and the City Clerk shall notify the owners of the affected properties of the amounts of their assessments, that unless the assessments are paid by July 20, 2014, unless extended by action of the Governing, following which notice of the extended date shall be mailed to the owners of record of all property in the Improvement District (the “Prepayment Date”), bonds will be issued therefore and such assessments will be levied concurrently with general taxes.

Section 3. Certification. Any amount of special assessments not paid within the time prescribed in *Section 2* hereof shall be certified by the City Clerk to the County Clerk of Sedgwick County, Kansas, in the same manner and at the same time as other taxes are certified and will be collected in 15 annual installments, together with interest on such amounts at a rate not exceeding the maximum rate therefor as prescribed by the Act. Interest on the assessed amount remaining unpaid between the

effective date of this Ordinance and the date the first installment is payable, but not less than the amount of interest due during the coming year on any outstanding bonds issued to finance the Improvements, shall be added to the first installment. The interest for one year on all unpaid installments shall be added to each subsequent installment until paid.

Section 4. Effective Date. This Ordinance shall take effect and be in force from and after its passage by the Governing Body and publication once in the official City newspaper. The City Clerk is directed to file this Ordinance with the Register of Deeds of Sedgwick County, Kansas.

PASSED by the City Council of the City on June 24th, 2014 and **SIGNED** by the Mayor.

(SEAL)

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of the original ordinance; that said Ordinance was passed on June 24th, 2014; that the record of the final vote on its passage is found on page ____ of journal ____; and that the Ordinance or a summary thereof was published in ***The Wichita Eagle*** on [_____].

DATED: June 24th, 2014.

Karen Sublett, City Clerk

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

Exhibit A

**(FAÇADE IMPROVEMENTS – 143 NORTH ROCK ISLAND IMPROVEMENT DISTRICT)
RESOLUTION NO. 14-149**

Description of Property	Amount of Maximum Assessment
N 58 FT LOT 6 EXC E 20 FT & 10 FT ADJ ON W MEAD AVE EAST WICHITA ADDITION	\$160,000
Pin #00118862	
Geo Code #B-00314	

When Recorded Return to:
City of Wichita, Kansas
Office of Urban Development
455 N. Main, 13th Floor
Wichita, Kansas 67202

**FACADE EASEMENT
FACADE IMPROVEMENT PROGRAM**

THIS FACADE EASEMENT made as of [_____], by and between Kamen GT, LLC, hereinafter called "Grantor," and the City of Wichita, Kansas, hereinafter called "Grantee" or "City":

WITNESSETH THAT,

WHEREAS, the Grantee is a municipal corporation pursuant to state law; and

WHEREAS, the Grantee is authorized pursuant to K.S.A. 12-6a01 *et. seq.* (the "Act") to make or cause to be made improvements which confer a special benefit upon a property within a definable area of the City; and,

WHEREAS, the Grantee may levy and collect special assessments upon property deemed by the City Council (the "Governing Body") to be benefited by such improvement; and,

WHEREAS, the Grantee may acquire an interest in property when necessary for any of the purposes set forth in the Act; and,

WHEREAS, the Grantee is authorized to accept easements necessary for improvements to be financed through special assessment financing pursuant to the Act; and,

WHEREAS, the Grantor is the owner in fee simple of the improved real property consisting of a lot and building improvements located at 143 North Rock Island, Wichita, Kansas (the "Premises"), the legal description for which is set forth on ***Exhibit A*** attached hereto and incorporated herein by reference; and,

WHEREAS, the Grantor has submitted a Facade Improvement Petition for special assessment financing to improve, restore and enhance the facade of the Premises; and,

WHEREAS, the grant of a facade easement by the Grantor to the Grantee will assist in the improvement of the Premises.

NOW, THEREFORE, in consideration of the sum of one dollar (\$1.00), and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey to the Grantee, its successors and assigns, a 15 year facade easement in and to the Premises. The easement granted in the Premises shall constitute a binding servitude upon the Premises and shall be deemed to run with the said Premises for a period of 15 years, with said fifteen year period being contemporaneous with the period of time that the Premises are encumbered with special assessment payments related to improvements made to its facade. As a further

condition of said easement, Grantor agrees to the following covenants, restrictions and obligations related to said facade:

1. Without the express written consent of the Grantee, signed by an authorized representative of the Grantee, no construction, alteration, remodeling or other action shall be undertaken or permitted to be undertaken which would affect the exterior facade improvements on the Premises (including, without limitation the exterior walls, the roofs or chimneys) or which would adversely affect the structural soundness of improvements on the Premises. In the event the Grantee does consent to construction, alteration, remodeling or other action which would affect the exterior facade of improvements on the Premises, the Grantor agrees that such construction, alteration, remodeling or other action will conform with applicable local, state and federal standards for construction or restoration or rehabilitation of historic property. Grantor agrees on behalf of itself and any successor condominium owners association at all times to maintain the Premises in good and sound state of repair and to bear the cost of all maintenance and repair of the Premises.

2. The Premises shall not be divided, diminished or subdivided nor shall the Premises ever be devised or conveyed except that the Premises may be divided into condominium units, the units may be conveyed to buyers, and the remainder of the Premises may be conveyed to a condominium owners association.

3. The Premises shall only be used for a use consistent with the zoning ordinances of the City.

4. No other structures may be constructed on the Premises during the term of this facade easement without the express written permission of the Grantee, signed by an authorized representative of the Grantee.

5. No utility transmission lines, except those required by the existing structures or by structures permitted by the Grantee, may be placed on or over the Premises.

6. No topographical changes shall be made or allowed on the Premises without the express written permission of the Grantee, signed by an authorized representative of the Grantee.

7. Grantor agrees that representatives of the Grantee, its successors or assigns, shall be permitted at all reasonable times to inspect the Premises. Inspections will normally take place on the exterior of the structures on the Premises; however, Grantor agrees that representatives of the Grantee, its successors and assigns, shall be permitted to enter and inspect the structures on the Premises to insure maintenance of structural soundness. Inspection of the interior of the structures will not take place more often than annually, in the absence of deterioration, and shall require prior notice to Grantor. Inspection of the interior of the structures will be made at a time mutually agreed upon by the Grantor and Grantee, its successors or assigns, and Grantor will not unreasonably withhold its consent in determining a date and time for such inspections.

8. In the event of a violation of any covenant or restriction herein, the Grantee, its successors and assigns, following no less than thirty (30) days notice to Grantor of the violation, may institute suit to enjoin such violation and to require restoration of the Premises in compliance with the covenants or restrictions herein. The Grantee, its successors or assigns, shall also have available all legal and equitable remedies to enforce Grantor's obligations hereunder (following expiration of the thirty (30) day notice and cure period set forth above), and in the event Grantor is found to have violated any of its obligations following expiration of such notice and cure period, Grantor shall reimburse Grantee, its successors and assigns, for any costs or expenses incurred in connection therewith, including court costs

and reasonable attorneys' fees. In addition, Grantor acknowledges that the Grantee has advanced or will advance \$20,000 in public funds to defray costs of a portion of Grantor's façade improvements, and Grantor further acknowledges that, in the event of Grantor's violation of any covenant or restriction herein contained for the preservation, maintenance or repair of the façade improvements during the term of this easement, the Grantee will not have received the social and economic development benefits expected in connection with its advance of public funds, and the resulting loss to the Grantee will be difficult to measure. In such event, the Grantor covenants to repay to the Grantee, on demand, as contractual or liquidated damages, the amount advanced.

9. Grantor agrees that these covenants and restrictions will be inserted by it in any subsequent deed or other legal instrument by which it divests itself of either the fee simple title or its possessory interest in the Premises, or any part thereof during the term of this facade easement. Grantor agrees to give Grantee written notice of any sale or mortgage of the Premises or any part thereof within a reasonable time after such sale or mortgage.

10. Grantor agrees to maintain the facades of the Premises in its original condition and configuration or in a condition or configuration which is agreed to by the Grantee.

11. Nothing herein contained shall impose any obligation or liability on the Grantee for the restoration, renovation, preservation or maintenance of the facades of the Premises or any part of the Premises. The Grantor shall indemnify and hold harmless the Grantee from any liability for any and all claims, demands, damages, judgments, costs or expenses in connection with the restoration, renovation, preservation and maintenance of the facades of the Premises or any part thereof or in connection with the failure to restore, renovate, preserve or maintain the facades of the premise or any part of the Premises.

12. The Grantor shall maintain insurance on the Premises in such amount and on such terms as will allow the Grantee to restore, repair or rebuild the facade of the Premises in the event the facade is damaged or destroyed. In the event of damage to or destruction of the facades of the Premises, the Grantor alone may determine that the facade of the Premises cannot be reasonably restored, repaired or reconstructed. In such event, the Grantee shall be entitled to receive from the Grantor the greater of the following: the fair market value of the easement granted herein at the time the easement was granted or the fair market value of the easement granted herein immediately before the facade of the Premises was damaged or destroyed. However, any payment to the Grantee under the terms of this paragraph shall not terminate the easement granted herein, and the terms of the easement which are still applicable to the Premises shall remain in full force and effect. The provisions of this paragraph shall apply whether or not the Grantor maintains the insurance coverage required by this paragraph. In the event the Grantee receives any payment under the terms of this paragraph, the Grantee shall use such payment in a manner consistent with the purpose of this easement.

13. Grantor acknowledges that the easement granted herein gives rise to a property right, vested immediately, with fair market value that is a minimum ascertainable portion of the fair market value of the Premises. Thus, if a subsequent unexpected change in the conditions surrounding the Premises makes it impossible or impracticable to preserve the Premises for the purposes for which the easement was granted and restrictions imposed by the easement granted herein are terminated by judicial proceedings, the Grantee, on a subsequent sale, exchange or involuntary conversion of the Premises, will be entitled to a portion of the proceeds determined in accordance with the ratio that the fair market value of the easement granted herein determined on the date of this Facade Easement is executed, unless state law determines that the Grantor is entitled to full proceeds from the conversion without regard to the terms of the prior restrictions imposed by the Facade Easement. In the event the Grantee receives such proceeds from the subsequent sale, exchange or involuntary conversion of the Premises, the Grantee shall

use such proceeds in a manner consistent with the terms conservation/enhancement purposes of the easement.

The covenants and restrictions imposed by the aforesaid, shall not only be binding upon the Grantor, but also upon its heirs, assigns, and all other successors in interest, and shall continue as a servitude running for the fifteen year term of the Facade Easement with the land and shall survive the Grantor and any termination of the Grantor's existence. All rights reserved herein to the Grantee shall run for the benefit of and be exercised by its successors, assigns, or by its designee duly authorized.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed in counterpart these presents as of the day and year first above written.

GRANTOR:

Kamen GT, LLC

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF [_____])
) SS:
COUNTY OF [_____])

This instrument was acknowledged before me on _____, by _____,
[Title] of [Property Owner].

[SEAL]

Notary Public

My Appointment Expires:

IN WITNESS WHEREOF, the parties hereto have executed in counterpart these presents as of the day and year first above written.

GRANTEE:

CITY OF WICHITA, KANSAS

(SEAL)

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF SEDGWICK)

This instrument was acknowledged before me on _____, by Carl Brewer, Mayor and Karen Sublett, City Clerk of the City of Wichita, Kansas, a municipal corporation.

[SEAL]

Notary Public

My Appointment Expires:

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

Exhibit A

Property Subject to Easement

An easement for construction and preservation of façade improvements on the east and west façades of certain buildings currently addressed at 143 North Rock Island, in the City of Wichita, Kansas, abutting public ways on Rock Island and Mead in such City, together with easements for ingress, egress and access to the said facades as necessary for such purposes, all on that property described as:

The north 58 feet of Lot 6, on Mead Avenue, except the east 20 feet thereof; in East Wichita Addition, Sedgwick County, Kansas, together with the east 10 feet of vacated Mead Avenue adjoining on the west.

**City of Wichita
City Council Meeting
June 17, 2014**

TO: Mayor and City Council

SUBJECT: Petition and Change Order for Emergency Water Line Installation in West Wichita (Districts IV and V)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendations: Approve the petition and change order; adopt the resolution.

Background: On May 6, 2014, the City Council ratified a public exigency, approving a project to construct five new water lines and provide service connections to existing water lines in an area of groundwater contamination identified by the Kansas Department of Health and Environment (KDHE). Duling Construction was awarded a contract for Socora, Rolling Hills, and North Byron Streets. On May 16th, the KDHE confirmed three additional streets requiring construction of new water lines and services: North Arcadia, South Byron, and Westfield, north of Rolling Hills. On June 3rd, the City Council ratified a public exigency, approving Duling Construction to construct these new water lines and services for \$244,010.

Analysis: A petition for water service was received from residents on Rolling Hills Court, west of Westfield; an area adjacent to the current project, but not within the contamination zone defined by the KDHE. The contractor has agreed to hold existing unit prices for this extra work, allowing the petitioned area to receive a water main extension for the lowest possible cost. The extra work will be added to the construction contract in the form of a change order.

The petition is signed by resident owners representing 68% of the improvement district area and 75% of the resident owners. The petition is valid per Kansas Statute 12-6a01. The petition was not presented to the District Advisory Boards due to the need to expedite construction and the work being authorized via change order.

Financial Considerations: The petition amount is \$60,000, with 85% being assessed to the improvement district on a square foot basis, and 15% being paid by the City's Water Utility fund.

The cost of the additional work is \$56,775, which represents 15% of the original contract amount and is within the 25% of contract cost limit set by City Council policy.

Legal Considerations: The Law Department has reviewed and approved the petition and change order as to form. The change order is within the 25% of contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve the petition and change order, adopt the resolution, and authorize the necessary signatures.

Attachments: Petition, resolution, budget sheet, cost estimate per property, change order, and map.

**PUBLIC WORKS-ENGINEERING**

June 6, 2014
CHANGE ORDER

To: Duling Construction Co., Inc.**Project: Water Distribution System
Emergency Installation Ph2 (Project B)****Change Order No.: 2****Project No.: 448-90632a****Purchase Order No.:****OCA No.: 635825****CHARGE TO OCA No.: 635825****PPN: 754072**

Please perform the following extra work at a cost not to exceed \$56,775.00
Paid by Special Assessments

Work for this Change Order cannot be completed until approved by all. Contractor should expect approximately 3 weeks for approval.

Additional Work: Install 8" waterline on Rolling Hills Court, west of Westfield

Reason for Additional Work: On May 6, 2014, the City Council ratified a public exigency, approving a project to construct five new water lines and provide service connections to existing water lines in an area of groundwater contamination identified by the Kansas Department of Health and Environment (KDHE). Duling Construction was awarded a contract for Socora, Rolling Hills, and North Byron Streets.

On May 16th, the KDHE confirmed three additional streets requiring construction of new water lines and services: North Arcadia, South Byron, and Westfield, north of Rolling Hills. On June 3rd, the City Council ratified a public exigency, approving Change Order #1 to Duling Construction to construct these new water lines and services.

A petition for water service was received from residents on Rolling Hills Court, west of Westfield; an area adjacent to the current project but not within the contamination zone defined by KDHE. The contractor has agreed to hold existing unit prices for this extra work, allowing the petitioned area to receive a water main extension for the lowest possible cost.

Line #	KDOT #	Item	Negotiated/	Qty	Unit Price		Extension
			Bid				
1	N.A.	Engineering Services	Negot'd	1	LS	5,000.00	5,000.00
2	N.A.	Pavement Removed/Replaced	Negot'd	1	LS	1,000.00	1,000.00
3	N.A.	Site Restoration	Negot'd	1	LS	18,500.00	18,500.00
4	N.A.	Pipe, WL 8"	Bid	560	lf	48.00	26,880.00
5	N.A.	Fire Hydrant Assembly	Bid	1	ea	4,000.00	4,000.00
6	N.A.	Valve Assembly, 8"	Bid	1	ea	1,395.00	1,395.00

TOTAL: \$56,775.00

CIP Budget Amount: \$1,368,010.00**Original Contract Amt.: \$386,270.00****Consultant: Design-Build****Current CO Amt.: \$56,775.00****Exp. & Encum. To Date: \$1,139,255.81****Amt. of Previous CO's: \$244,010.00****Total of All CO's: \$300,785.00****CO Amount: \$56,775.00****% of Orig. Contract / 25% Max.: 77.86%****Unencum. Bal. After CO: \$171,979.19****Adjusted Contract Amt.: \$687,055.00**

Recommended By:

Steve Degenhardt, P.E.
Construction Division Manager

Date

Approved:

Contractor

Date

Approved as to Form:

Gary Rebenstorf
Director of Law

Date

Approved:

Gary Janzen, P.E.
City Engineer

Date

Approved

Alan King
Director of Public Works & Utilities

Date

By Order of the City Council:

Carl Brewer
Mayor

Date

Attest: _____
City Clerk

First Published in the Wichita Eagle on June 20, 2014

RESOLUTION NO. 14-172

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING THE IMPROVEMENT OF **WATER DISTRIBUTION SYSTEM NUMBER (NORTH OF MAPLE, WEST OF TYLER) 448-90635** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF **WATER DISTRIBUTION SYSTEM NUMBER (NORTH OF MAPLE, WEST OF TYLER) 448-90635** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve **Water Distribution System Number (north of Maple, west of Tyler) 448-90635**.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **Sixty Thousand Dollars (\$60,000)** exclusive of interest on financing and administrative and financing costs, with **85** percent payable by the improvement district and 15 percent payable by the Wichita water Utility. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **May 29, 2014**, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

ROLLING HILLS ESTATES ADDITION

Lots 1 through 4, Inclusive

Lot 5 and That Part Lot 6 Beginning Intersection Rolling Hills Court and Line Common to Lots 5 through 6 Northwest 31.65 Feet Southeasterly 23.15 Feet Northeasterly 12.29 feet to Beginning

Lots 7 through 11, Inclusive

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **square foot** basis.

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 17th day of June, 2014.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK
(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF,
DIRECTOR OF LAW

RECEIVED

JUN 2 '14

CITY CLERK OFFICE

WATER DISTRIBUTION SYSTEM PETITION

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

448-90635

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described within an addition as follows:

ROLLING HILLS ESTATES ADDITION

Lots 1 – 4, Inclusive

Lot 5 & That Part Lot 6 Beginning Intersection Rolling Hills Court & Line
Common to Lots 5-6 Northwest 31.65 Feet Southeasterly 23.15 Feet
Northeasterly 12.29 Feet to Beginning

Lots 7 – 11, Inclusive

do hereby petition pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended:

- (a) That there be constructed a water distribution system, including necessary water mains, pipes, valves, hydrants, and appurtenances to serve the area described above, according to plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.
- (b) That the estimated and probable cost of the foregoing improvement being **Sixty Thousand Dollars (\$60,000)** exclusive of the cost of interest on borrowed money, with **85** percent payable by the improvement district and **15** percent payable by the Wichita Water Utility. The actual assessed cost shall not exceed the estimated assessed cost by more than 10%, exclusive of the cost of interest on borrowed money. If, at the time the City Engineer bids or is ready to bid the project for construction it appears that the final cost will exceed this amount, this project will be abandoned and rescinded by the City Council. In order to re-establish the project, a new petition with an increased budget must be circulated and submitted.

This petition shall be considered null and void if it is not filed with the City Clerk within one year of the preparation date of **May 29, 2014**.

- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.
- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a **Square Foot** basis:

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed

to each ownership or parcel on a square foot basis.

2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature to form one public improvement project.

3. That names may not be withdrawn from this petition by the signers thereof after the Governing body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.

4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	ADDRESS	SIGNATURE	DATE
WESTFIELD ACRES ADD.			
LOT 1	28 W ROLLING HILLS CT	FUCHS COLLEEN H TRUST <i>Colleen H. Fuchs Trust</i>	6-1-14
LOT 2	32 W ROLLING HILLS CT	MORRISON SHARON L <i>Sharon L Morrison</i>	June 1, 2014
LOT 3	36 W ROLLING HILLS CT	DUNCAN MARVIN D & CONSTANCE M <i>Marvin D. Duncan</i> <i>Constance M. Duncan</i>	31 MAY 2014 31 May '14
LOT 4	40 W ROLLING HILLS CT	WINGERT KATHLEEN B REVOCABLE TRUST <i>Kathleen B Wingert</i>	Revocable Trust June 1, 2014
Lot 5 & That Part Lot 6 Beginning Intersection Rolling Hills Court & Line Common to Lots 5-6 Northwest 31.65 Feet Southeasterly 23.15 Feet Northeasterly 12.29 Feet to Beginning	44 W ROLLING HILLS CT	BROWN RONALD M & SHERRY L LIV TR <i>Ronald M Brown Living Trust</i> <i>Sherry L Brown Living Trust</i>	5-31-14 5-31-14
LOT 7	43 W ROLLING HILLS CT	DERKING MICHAEL L & SHERI D <i>Michael L Derking</i> <i>Sheri D Derking</i>	5-31-14 5/31/14
LOT 8	39 W ROLLING HILLS CT	ROY RICHARD F & RENE C	
LOT 9	35 W ROLLING HILLS CT	AABY STEWART V & DINA M	

LOT 10	31 W ROLLING HILLS CT	RUTH ANNFERRIN
LOT 11	29 W ROLLING HILLS CT	<p>WAKIM ANTONIE E & MIMI H</p> <p><i>Antonie E wakim 6-1-14</i></p> <p><i>Mimi H Wakim 6-1-14</i></p>

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the presence of one of the resident owners whose signature appears on the petition.

Sherry L. Brown
Name

44 Rolling Hills Ct
Address

316-722-8411
Telephone Number

Sworn to and subscribed before me this 2 day of June, 2014



Anis Edwards
Deputy City Clerk

Project Request

☐ CIP ☒ Non-CIP

☒ NEIGHBORHOOD IMPROVEMENT

☐ ORDERED BY WCC

☒ PETITION

PETITION PERCENTAGE: 68

DEPARTMENT: 13 Public Works & Utilities

DIVISION: Engineering

RESOLUTION/ORDINANCE #: 14-

FUND: 470 Water Improvements N.I.

ENGINEERING REFERENCE #: 448-90635

COUNCIL DISTRICT: 21 Council Districts 4, 5

DATE COUNCIL APPROVED: Jun 17, 2014

REQUEST DATE:

PROJECT #: 470180

PROJECT TITLE: Rolling Hills Ct Emergency Water Lines

PROJECT DETAIL #: 01

PROJECT DETAIL DESCRIPTION: Rolling Hills Ct Emergency Water Lines

OCA #: 735507

OCA TITLE: Rolling Hills Ct Emergency Water Lines

PERSON COMPLETING FORM: Joni Chamberlain

PHONE #: 268-4548

PROJECT MANAGER: Rebecca Greif

PHONE #: 268-4505

☒ NEW BUDGET

☐ REVISED BUDGET

REVENUE

EXPENSE

Object Level 3	Budget	Object Level 3	Budget
9730 S.A. Bonds	\$51,000.00	2999 Contractuals	\$60,000.00
9720 G.O. Bonds	\$9,000.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00
	\$0.00		\$0.00

REVENUE TOTAL: \$60,000.00

EXPENSE TOTAL: \$60,000.00

NOTES:

SA = 85% of petition total
GO = 15% of petition total

SIGNATURES REQUIRED

DIVISION HEAD: 

DEPARTMENT HEAD: _____

BUDGET OFFICER: _____

CITY MANAGER: _____

Print Form

DATE: 06/09/14

DATE: _____

DATE: _____

DATE: _____

Estimated assessments for Water to serve Rolling Hills Court						05/29/14
Key No.	Property Owner	Property Address	Legal Description	Area (sq. ft.)	Estimated Assessment*	Annual Payment**
Rolling Hills Estates Add.						
D 28392	FUCHS COLLEEN H TRUST	28 W ROLLING HILLS CT	LOT 1	22689	\$4,792	\$240
D 28393	MORRISON SHARON L	32 W ROLLING HILLS CT	LOT 2	18710	\$3,952	\$198
D 28394	DUNCAN MARVIN P & CONSTANCE M	36 W ROLLING HILLS CT	LOT 3	18557	\$3,920	\$196
D 28395	WINGERT KATHLEEN B REVOCABLE TRUST	40 W ROLLING HILLS CT	LOT 4	16909	\$3,571	\$179
D 28396	BROWN RONALD M & SHERRY L LIV TR	44 W ROLLING HILLS CT	Lot 5 & That Part Lot 6 Beginning Intersection Rolling Hills Court & Line Common to Lots 5-6 Northwest 31.65 Feet Southeasterly 23.15 Feet Northeasterly 12.29 Feet to Beginning	23478	\$4,959	\$248
D 28398	DIERKING MICHAEL L & SHERI	43 W ROLLING HILLS CT	LOT 7	38669	\$8,167	\$408
D 28399	ROY RICHARD F & RENE C	39 W ROLLING HILLS CT	LOT 8	28181	\$5,952	\$298
D 28400	AABY STEWART V & DINA M	35 W ROLLING HILLS CT	LOT 9	25236	\$5,330	\$267
D 28401	RUTH ANNFERRIN	31 W ROLLING HILLS CT	LOT 10	25063	\$5,294	\$265
D 28402	WAKIM ANTONIE E & MIMI H	29 W ROLLING HILLS CT	LOT 11	28702	\$6,062	\$303
Totals:				246194	52000	2600
Abbreviations:						
etal. = and others						
etux. = and wife						
etvir. = and husband						
nr = non resident						
* Estimated assessment for the water line construction based on \$0.21 per square foot basis						
** Estimated Annual escrow payment based on 4% bond sale rate, and spread over 20 years						
BREAKDOWN OF PROJECT COSTS						
Improvement District Share (85%)				\$52,000		
Wichita Water Utility Share (15%)				\$8,000		
Total Estimated project cost				\$60,000		



WDS for Rolling Hills Court



City Council
June 17, 2014



Rolling Hills Court Water Line Extension

NAME: Sherry Brown
ADDRESS: 44 Rolling Hills Ct
Wichita KS 67212
PHONE: 722-8411
EMAIL: Stylingbanker@cox.net

Comment(s):

Good Morning,
We need water line because of
contamination in area that was not
suppose to spread but obviously is.

Thank You.

Engineering Division

City Hall • Seventh Floor • 455 North Main • Wichita, Kansas 67202-1606

T 316.268.4501 F 316.268.4114

www.wichita.gov

City of Wichita
City Council Meeting
June 17, 2014

TO: Wichita Airport Authority

SUBJECT: Food and Beverage Concession and Lease Agreement
New Terminal
Wichita Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Non-Consent)

Recommendation: Approve the agreement.

Background: Nationally advertised Requests for Proposals (RFP) from experienced airport food and beverage (F&B) concessionaires were sought this spring to serve as the master F&B operator for the new airport terminal. A proposal from MSE Branded Foods (MSE) from Gainesville (Atlanta-area), GA was received. MSE was founded in 1987 and specializes in food and beverage operations at small hub airports similar in size to Wichita, as well as in malls, hospitals, universities, and hotels. References provided by the airport directors at five locations where MSE currently operates reported outstanding customer service, high quality operations, responsiveness to airport and customer needs, and good financial returns to the airports.

Following an in-person presentation and interview with MSE's president and the chief financial officer, a Special Screening and Selection Committee unanimously recommended the selection of MSE to be the food and beverage concessionaire for the new airport terminal when it opens next spring. The selection committee included the City Manager and three members of the Airport Advisory Board, in addition to staff. The committee confirmed that MSE met all requirements set forth in the RFP with respect to achieving the goals of the concession program, such as the proposed brands and concepts, the capital investment and facility design, the financial offer regarding percentage commissions, and the company's experience and quality of past performance at other airports. At its June 2, 2014, meeting, the Airport Advisory Board voted unanimously to approve the selection of MSE and to recommend to the Wichita Airport Authority that the agreement be approved.

Analysis: MSE's food and beverage concepts will include a mixture of major and popular national brands, along with strong locally-themed restaurants. Subject to final operational discussions with MSE and completion of design efforts, it is anticipated that on opening day of the new terminal, MSE will provide food and beverage units at four separate locations as described below:

- § A pre-security Old Town Café will be located just inside the main terminal entrance on the ground floor, and will be accessible by meeters and greeters and airport employees and anyone not desiring to go through the security checkpoint. The Café will offer a wide array of baked goods, breakfast sandwiches, grab-and-go items, fresh made-to-order sandwiches, wraps, appetizers, pizzas, and salads. A bar will complement the location, which will reflect the architectural theme of Old Town.
- § Just past the Transportation Security Administration security checkpoint, the Center Food Court area across from Gate 5 will prominently feature a variety of offerings. The quick-service walk-up counter offerings will include Chick-fil-A and Dunkin' Donuts, two of the

most popular brands nationwide. Chick-fil-A will offer a variety of its classic chicken sandwiches, in both a breakfast and an all-day menu. Dunkin' Donuts will offer a variety of popular coffees, pastries, bagels, donuts, breakfast sandwiches, and beverages. In addition, this area will include Wichita's own River City Brewing Company, which will provide a casual dining option with fresh, local brews along with a sit-down restaurant menu of appetizers, salads, soups, sandwiches, grilled items, pizzas, burgers, desserts, and other pub food. There is room for future expansion and additional brand offerings in the food court when customer demand dictates.

- § In a prime location for aircraft viewing in the Center Concourse next to Gate 5, the Air Capital Bar will provide a full-service bar and a light menu of appetizers, sandwiches, wraps, and fresh pizzas.
- § On the concourse northwest end across from Gate 2, MSE will operate a Grab and Fly unit which will feature breakfast sandwiches, fresh baked goods, Dunkin' Donuts coffee, and a selection of sandwiches and other grab-and-go items for those on a short time schedule.

MSE's contract commits the firm to charging customers no more than "local area street pricing" plus 10% for menu items. There are also financial penalties in the contract in the event of specific customer service issues that are not corrected. Any significant menu changes, or any concept/brand changes, proposed during the term of the contract require the specific approval of the Director of Airports.

Financial Considerations: The term of the lease agreement with MSE is a base period of 10 years, with a five-year option to renew. MSE will pay the airport an annual minimum guarantee of \$300,000 or a percentage of gross sales (whichever is higher) that starts at 10% for food and non-alcoholic beverage items and 12% on alcoholic beverages. There is a sliding scale by which the commission percentage increases up to 15% for food sales and 16% for alcoholic beverage sales, as gross sales increase through several different thresholds.

Since the majority of its food and beverage locations will be post-security, MSE projects that, based upon current passenger traffic forecast assumptions, it will create gross sales of approximately \$5.20 per passenger in year one, versus our current concessionaire's gross sales of approximately \$3.70 per passenger. Based upon the above commission percentages, the anticipated payments to the Airport should exceed the minimum annual guarantee of \$300,000.

MSE will make a minimum capital investment for facility build-out in the public-facing food service units of \$350 per square foot, which equates to approximately \$3.1 million. MSE has committed to meeting the Federal Aviation Administration-required Airport Concessionaire Disadvantaged Business Enterprise goal of 4.5% through the use of a subcontractor.

Legal Considerations: The Law Department has reviewed and approved the agreement as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the agreement and authorize the necessary signatures.

Attachments: Food and Beverage Concession and Lease Agreement.



WICHITA MID-CONTINENT AIRPORT

**FOOD AND BEVERAGE CONCESSION
AND LEASE AGREEMENT**

MSE BRANDED FOODS OF WICHITA, LLC

TABLE OF CONTENTS

SECTION	Page
1. DEFINITIONS	4
2. PREMISES	7
3. TERM.....	9
4. OBJECTS AND PURPOSES OF AGREEMENT.....	10
5. CONCESSION FEES AND OTHER PAYMENT OBLIGATIONS	13
6. PAYMENT SECURITY	16
7. PAYMENTS	17
8. GROSS REVENUES.....	17
9. BOOKS AND RECORDS	19
10. AUDIT	20
11. PERFORMANCE STANDARDS	20
12. MAINTENANCE AND REPAIRS	28
13. SIGNAGE	31
14. SANCTIONS	31
15. UTILITIES	33
16. TENANT IMPROVEMENTS.....	34
17. ENVIRONMENTAL COVENANTS.....	39
18. SURRENDER OF POSSESSION AND RESTORATION.....	42
19. PERSONAL PROPERTY	43
20. TAXES	44
21. MISCELLANEOUS COVENANTS.....	45
22. INDEMNITY AND INSURANCE BY CONCESSIONAIRE	45
23. INDEPENDENCE OF AGREEMENT	49
24. TERMINATION BY AUTHORITY IN EVENT OF DEFAULT	50
25. TERMINATION BY CONCESSIONAIRE IN THE EVENT OF DEFAULT.....	51
26. WAIVER OF STATUTORY NOTICE.....	53
27. TRANSFER OF OWNERSHIP.....	53
28. ASSIGNMENT AND SUBLETTING.....	53
29. NONDISCRIMINATION.....	56
30. NON-INTERFERENCE WITH AIRPORT OPERATIONS	58
31. COOPERATION WITH AIRPORT DEVELOPMENT	59
32. TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES.....	59
33. LIENS.....	60
34. RULES AND REGULATIONS	60

35.	ENCROACHERS, TRESSPASSERS AND OTHER THIRD PARTY HAZARDS.....	61
36.	SECURITY SYSTEMS.....	61
37.	SECURITY	62
38.	AIRPORT SECURITY PROGRAM COMPLIANCE	62
39.	GENERAL PROVISIONS	64
40.	THIRD PARTY RIGHTS	71
41.	QUIET ENJOYMENT	71
42.	DAMAGE OR DESTRUCTION	71
43.	CONDEMNATION.....	72
44.	IMPOSITIONS.....	73
45.	MODIFICATIONS FOR GRANTING FAA FUNDS.....	73
46.	INCORPORATION OF PROPOSAL DOCUMENTS	74
47.	NOTICES, CONSENTS, AND APPROVALS	74
48.	INTENTION OF PARTIES	75
49.	ENTIRE AGREEMENT	75
50.	MODIFICATION	76
51.	APPROVAL, CONSENT, DIRECTION OR DESIGNATION BY AUTHORITY	76

FOOD AND BEVERAGE CONCESSION AND LEASE AGREEMENT

WICHITA MID-CONTINENT AIRPORT

THIS AGREEMENT, made and entered into this day of June 17, 2014, by and between The Wichita Airport Authority, hereafter referred to as "AUTHORITY," and MSE Branded Foods of Wichita, LLC, Federal Tax Identification # 46-5693826, hereinafter referred to as "CONCESSIONAIRE,"

W I T N E S S E T H:

WHEREAS, AUTHORITY is a governmental entity authorized under the laws of the State of Kansas to own and operate one or more airports, with full, lawful power and authority to enter into binding legal instruments by and through its governing body; and

WHEREAS, AUTHORITY owns, operates, regulates, administers, and maintains the campus of Wichita Mid-Continent Airport ("Airport"); and

WHEREAS, a new Terminal Building at the Airport is scheduled to open Spring of 2015; and

WHEREAS, the AUTHORITY desires to lease to CONCESSIONAIRE certain premises in the new Terminal under the terms and conditions set forth below in this Concession and Lease Agreement ("Agreement") for the purpose of operating a Food and Beverage Concession; and

WHEREAS, CONCESSIONAIRE is an individual, or an entity authorized to operate in the State of Kansas ("State") that desires to lease from the AUTHORITY certain premises in the Terminal under the terms and conditions set forth below in this Agreement for the purpose of operating a Food and Beverage Concession on the Premises; and

WHEREAS, the AUTHORITY issued a Request for Proposals ("RFP") for the operation of a Food and Beverage Concession in the Terminal; and

WHEREAS, the CONCESSIONAIRE has been awarded the privilege of operating a Food and Beverage Concession in that being most advantageous to the Terminal at the Airport, based on its Proposal submitted in response to the RFP,

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, AUTHORITY and CONCESSIONAIRE do hereby agree as follows:

1. DEFINITIONS

The terms and phrases defined in this Section for all purposes of this Food and Beverage Concession and Lease Agreement shall have the following meanings:

ACDBE - shall mean Airport Concessions Disadvantaged Business Enterprise.

Additional Support Space - shall mean any additional support space requested by the CONCESSIONAIRE or assigned at the request of the AUTHORITY after the Initial Term commences. Additional Support Space shall be subject to the AUTHORITY's written approval and subject to the rental rates, which are established by AUTHORITY's Schedule of Fees and Charges. Such Schedule shall be amended from time to time by action of the AUTHORITY or its delegates.

Agreement - shall mean this written Food and Beverage Concession and Lease Agreement which creates rights and obligations of the parties to such Agreement.

Airport - shall mean the Mid-Continent Airport under the ownership, control and jurisdiction of the Wichita Airport Authority.

Airport Property - shall mean any property, facilities, and Improvements owned, leased and/or under the control and jurisdiction of the AUTHORITY and roads and streets contained thereon. _

Airside - shall mean the airfield and the areas beyond security checkpoints and passport and customs control in the Airport terminal and other building(s) at the Airport.

City - shall mean the City of Wichita, Kansas.

Commencement Date - shall mean the date the Agreement is effective, which shall be June 17, 2014.

Commercial Business or Commercial Activity - shall mean:

- exchanging, trading, buying, hiring or selling of commodities, goods, services or property of any kind on Airport Property; or
- engaging in any conduct on Airport Property for revenue-producing purposes, whether or not currency, monetary exchange or other forms of monetary instruments or credits ultimately are exchanged, obtained, or transferred on Airport Property; or
- offering or exchange of any service on Airport Property as a part of, or as a condition to, other revenue-producing activities or services on or off Airport Property; or

- acting for the purpose of securing revenue, earnings, income, and/or compensation (including exchange for service), and/or profit, whether or not such objectives are accomplished.

Common Use - shall mean those areas shared and used in common and conjunction with others in an undivided fashion and not intended or used for the exclusive business activity of a single party.

Concession Facilities Space - shall mean that portion of the Premises where Commercial Activity is conducted.

Concession Fees - shall mean a monetary amount charged by AUTHORITY as compensation for an act, service or privilege provided by AUTHORITY as described in Section 5.01 hereof.

Contract Year - shall mean the twelve (12) month period of time which shall start on the Opening Day of the Initial Term of this Agreement, and shall continue thereafter for twelve (12) month periods. The first day of the Term, as defined in Section 3 of this Agreement, shall mark the commencement of the first day of the first Contract Year. However, if the Initial Term commences on a date other than the first day of a calendar month, the first Contract Year shall include that fractional portion of the calendar month in which the Initial Term commences (“the Fractional First Month”) and the first full twelve (12) calendar months thereafter.

Date of Substantial Completion - shall mean the date that Tenant Improvements are ready to be used for their intended purpose, as determined by the AUTHORITY.

Day - shall mean a calendar day of twenty-four (24) hours measured from midnight to the next midnight.

Director - shall mean the Director of Airports who is the person designated by the AUTHORITY to exercise functions with respect to the rights and obligations of the AUTHORITY under this Agreement. Said term shall also include any person expressly delegated by the Director of Airports to exercise functions with respect to the rights and obligations of the Director of Airports under this Agreement.

DOT - shall mean the Department of Transportation of the United States government and any federal agency succeeding to its jurisdiction.

Exclusive Use Areas - shall mean those premises conveyed to CONCESSIONAIRE for its exclusive business activity and use, and not shared or used in common with others, and as specifically set forth in this Agreement.

Exclusive Right – shall mean those rights granted to the CONCESSIONAIRE by the AUTHORITY for the sale of certain products and services in specific locations and in such manner as specifically approved in this Agreement.

FAA – shall mean the Federal Aviation Administration of the United States government and any federal agency succeeding to its jurisdiction.

Food and Beverage Concession - shall mean the sale of food and beverage products and services (alcoholic and non-alcoholic) from shops, kiosks, and carts, in specific locations and in such manner as specifically approved in this Agreement.

Hazardous Materials - shall mean any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as Hazardous Material(s) (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law.

HVAC - shall mean heating, ventilating and air-conditioning systems.

Improvements - shall mean any construction, addition, alteration or betterment to real estate or to any existing Improvement on any part thereof that is affixed in such manner that it cannot be easily removed without damaging the property.

Landside - shall mean all areas of the Airport not located on the Airside, as defined herein.

Minimum Facility Build-Out Investment - shall mean the lowest investment per square foot for Tenant Improvements of each Concession Facility to be spent by CONCESSIONAIRE.

Opening Day - shall mean the date on which the Terminal is open and available for public access and use.

Premises - shall mean those certain parcels or portions of Airport Property at the Airport leased hereunder to CONCESSIONAIRE, more particularly described in Section 2, Premises and shown on Exhibit A of this Agreement, which may be amended by consent of the parties from time to time.

Rules, Regulations and Code - shall mean those codes established and set forth under Chapter 9.35 AIRPORTS, of the Code of City Ordinances of the City of Wichita; Airport Standard Operating Procedures establishing certain policies and procedures on Airport Property; and applicable state law and federal statutes and regulations.

Sign - shall mean any advertising sign, billboard, identification sign or symbol, poster, or other similar device, regardless of content.

Sublessee - shall mean any individual, company, corporation, partnership or other entity entering into an agreement with CONCESSIONAIRE, with the written approval of the AUTHORITY, to sublease all or any portion of the Premises.

Support Space - shall mean space used for office and/or storage purposes that is not part of a Concession Facilities Space. Availability and use of Additional Support Space shall be subject to the AUTHORITY's written approval and subject to the rental rates, which are established by AUTHORITY's Schedule of Fees and Charges. Such Schedule shall be amended from time to time by action of the AUTHORITY or its delegates.

Tax - shall mean and includes any assessment, license, charge, imposition, or levy imposed by any governmental body pursuant to its taxing power.

Tenant Improvements - shall mean any Improvements done by CONCESSIONAIRE, its agents, employees, Sublessees, contractors, subcontractors, licensees and/or representatives. Tenant Improvements must be approved in writing by the AUTHORITY.

Terminal - shall mean the new passenger terminal that replaces the existing passenger terminal building at the Airport, and is situated immediately adjacent to the new Parking Garage. The traveling public will access commercial aircraft and related facilities for transit and ancillary activities from the Terminal. Terminal is scheduled to open Spring of 2015.

TSA - shall mean the Transportation Security Administration of the United States government, and any federal agency succeeding to its jurisdiction.

Turnover Date - shall mean, for each location within the Premises, the date approved by the AUTHORITY for CONCESSIONAIRE to commence construction of Tenant Improvements.

2. PREMISES

Section 2.01 - Concession Facilities Space

Effective as of the Turnover Date(s), AUTHORITY hereby leases to CONCESSIONAIRE Concession Facilities Space, consisting of 10,225 square feet, as outlined on Exhibit A, attached hereto and made a part hereof. CONCESSIONAIRE hereby agrees that the Concession Facilities Space in the Terminal shall be utilized by CONCESSIONAIRE for the sole purpose of

carrying out the customary and necessary transactions and activities of operating the concession business.

Section 2.02 - Support Space and Additional Support Space

Effective as of the Turnover Date(s) of this Agreement, AUTHORITY hereby leases to CONCESSIONAIRE Support Space, consisting of 225 square feet of office space and consisting of 4,466 square feet of storage space, totaling leased space by CONCESSIONAIRE of 4,691 square feet, as outlined on Exhibit A, attached hereto and made a part hereof.

The Concession Facilities Space and Support Space are referred to together as the Premises. Sizes of areas are approximate and are subject to change during the construction of the Terminal. CONCESSIONAIRE will be given at least one hundred and twenty (120) Days from the Turnover Date in order to complete the construction of the Premises prior to the opening of the Terminal.

Section 2.03 - Expansion, Contracting and Relocation

The AUTHORITY may expand, contract or relocate any portion or all of the Premises due to Airport development/construction, operational necessity, security or safety considerations. In such event, CONCESSIONAIRE shall be given no less than one hundred and twenty (120) Days prior written notice unless circumstances beyond the control of the AUTHORITY occur (e.g., because of a direct or indirect requirement by TSA or another governmental authority), in which case notice will be given as soon as reasonably possible. If, at the AUTHORITY's sole determination, CONCESSIONAIRE is unable to reasonably continue its operations at any part of the Premises as a result of a space contracting as authorized herein, the AUTHORITY will attempt to provide reasonably comparable space for relocation within the Terminal, but makes no guarantee of such availability. CONCESSIONAIRE shall fully cooperate so that any such expansion, contracting or relocation occurs within the time frame as determined by the AUTHORITY. Any expansion, contracting or relocation required hereunder will not affect CONCESSIONAIRE'S Concession Fees and other payment obligations under this Agreement unless such change results in a change in total square footage of Concessions Facilities Space leased to CONCESSIONAIRE in excess of fifteen percent (15%), in which case the Minimum Annual Guarantee ("MAG") will be proportionately increased or reduced effective as of the date of such expansion, contracting or relocation.

In the event of relocation, the AUTHORITY will credit CONCESSIONAIRE for CONCESSIONAIRE'S "reasonable and proper moving costs", as determined by the AUTHORITY. For purposes hereof, "reasonable and proper moving costs" include moving of Personal Property from the old space to the new space, moving and reinstallation of telephone lines and computer equipment and connections, and reasonable expenses associated with reinstalling electrical connections and other utilities. In addition, in the event of relocation, the

AUTHORITY will reimburse CONCESSIONAIRE for the remaining undepreciated portion of the costs of CONCESSIONAIRE'S Tenant Improvements that are not replaced or relocated from the old space to the new space by the AUTHORITY, computed based on straight-line depreciation over a ten (10) year life from the Date of Substantial Completion.

If a deletion or reduction occurs which causes the Premises to no longer be commercially viable, as determined by the AUTHORITY in its sole judgment, and there is no relocation, then the AUTHORITY will pay CONCESSIONAIRE the remaining undepreciated portion of the costs of CONCESSIONAIRE'S Tenant Improvements at such Premises, computed based on straight-line depreciation over a ten (10) year life from the Date of Substantial Completion.

For the purpose of determining the undepreciated portion of the costs of CONCESSIONAIRE'S Tenant Improvements, the cost of the Tenant Improvements shall be based on the Tenant Improvements Cost Statement provided to the AUTHORITY by CONCESSIONAIRE as required in Section 16.12 hereof, verified by actual bills and receipts, timely submitted and hereby been approved in writing by AUTHORITY.

If the AUTHORITY exercises its right to delete or reduce the CONCESSIONAIRE'S Premises, then the portion of the Premises that is deleted or reduced shall cease to be leased to CONCESSIONAIRE and shall no longer be subject to the terms of this Agreement.

If the AUTHORITY requires deletion, reduction or relocation of the Premises, the AUTHORITY shall not be liable to CONCESSIONAIRE for any damages (other than credit for reasonable and proper moving costs and approved depreciation) including, but not limited to, damages for any inconvenience or loss of business as a result of the deletion, reduction or relocation of the Premises, or any other form of consequential or incidental damages.

3. TERM

Section 3.01 - Interim Term

The Interim Term of this Agreement shall commence on June 17, 2014 and, unless sooner terminated or extended in accordance with the terms and conditions of this Agreement, will continue until the last day of the first month in which the Terminal opens on Opening Day, which is anticipated to be Spring of 2015.

Section 3.02 - Initial Term

The Initial Term of this Agreement shall commence on Opening Day, unless sooner terminated or extended in accordance with the terms and conditions of this Agreement, shall expire at the end of the ten (10) Contract Year period.

Section 3.03 - Option Term to Extend

Upon the mutual agreement of the AUTHORITY and CONCESSIONAIRE, this Agreement may be renewed for one (1), consecutive five (5) Contract Year period (“Option Term”), provided CONCESSIONAIRE is not in default hereunder beyond any applicable grace or cure periods in Rent, Concession Fees, or other payments to AUTHORITY at the time of notice requesting exercising the Option Term. If CONCESSIONAIRE wishes to exercise the Option Term, written notice shall be submitted to AUTHORITY no less than ninety (90) days prior to the expiration of the Initial Term.

The Option Term, if exercised by mutual agreement of both parties, shall commence at the completion of the Initial Term.

Section 3.04 – Void of Option Term to Extend

If CONCESSIONAIRE is in default of any obligation under this Agreement beyond the time period expressly allowed in this Section then any notice attempting to exercise the Option Term shall be void.

4. OBJECTS AND PURPOSES OF AGREEMENT

Section 4.01 -Rights and Privileges

The purpose of this Agreement is to grant to CONCESSIONAIRE the right and privilege of the use and occupancy of the Premises for its conduct of a food and beverage concession at the Terminal. The CONCESSIONAIRE is authorized to provide the Commercial Activity of food and beverage concession which shall include the sale of fresh-prepared and pre-packaged food, themed merchandise associated with food and beverage brands operated in the Terminal, snacks

and alcoholic and non-alcoholic beverages from shops, kiosks, and carts as approved by the AUTHORITY and in locations as shown on Exhibit A.

CONCESSIONAIRE shall develop and maintain a comprehensive Food and Beverage Concession program totally integrated and coordinated as to design, quality, and content within the Terminal. Each Concession Facilities Space shall be in good taste, professionally developed, and of such high caliber as to contribute to the establishment of the Terminal as a prestige location for a Food and Beverage Concession.

CONCESSIONAIRE shall have the right of ingress and egress on Airport Property consistent with Rules, Regulations and Code in common with others for the benefit of its employees, customers, Sublessees, contractors, subcontractors, agents and representatives, to be exercised in a reasonable manner. This right of ingress and egress is granted for activities incidental or related to CONCESSIONAIRE'S approved activities, and for no other purposes except as may be approved in writing by AUTHORITY. CONCESSIONAIRE shall not interfere with the rights, privileges and access of other tenants, tenant employees, patrons and invitees on the Airport. This right is subject to federal, State and local security and safety requirements and standards. As required by Kansas State Statute, the Premises shall be used and occupied for a Food and Beverage Concession in support of aviation purposes or purposes incidental or related thereto.

Employees, agents and contractors of CONCESSIONAIRE shall be permitted to park their vehicles at the Airport under the same terms and conditions as employees of other concessionaires at the Airport. Visiting service personnel and product deliveries shall be permitted to park or unload in areas designated for temporary vendor parking or unloading, or at other locations as may from time-to-time be designated by AUTHORITY.

CONCESSIONAIRE shall have the right to install and maintain appropriate approved Signs at the Premises, provided, that the design, installation and maintenance of such Signs shall be consistent with the graphic standards and policies of the AUTHORITY and in accordance with the Tenant Construction and Alteration Process Manual (TCAP), and as it may be amended from time to time. All such signage shall be subject to written approval of the AUTHORITY prior to installation. The parties acknowledge the Premises as a private leasehold and non-public forum, and that political, religious or social commentary or other forms of First Amendment expression are inappropriate on the Premises.

CONCESSIONAIRE recognizes that other tenants now and hereafter may occupy other portions of the Airport Property, and that such other tenants shall have the right to use public roadways, streets, restrooms, walkways, ramps, taxiways, runways, access gates, lighting, beacons, navigational aids, or other conveniences for aeronautical operations, and these common facilities

are not under an exclusive use lease; and CONCESSIONAIRE shall conduct its operations in such a manner as to not block, impair or impede access by others to these common facilities, nor in any other way interfere with, nor disrupt the business of other tenants or the quiet enjoyment of their leasehold interests on Airport Property.

Nothing herein shall restrict the rights of the AUTHORITY to grant to others the rights to engage in Commercial Activity for the sale of pre-packaged snacks, non-alcoholic containerized beverages, and non-food and beverage items in the Terminal from shops or through automated vending services.

The AUTHORITY expressly does not grant to the CONCESSIONAIRE Exclusive Rights for food and beverage retailing on Airport Property beyond the Terminal.

The AUTHORITY does expressly grant to the CONCESSIONAIRE Exclusive Rights to engage in the Commercial Activity of food and beverage retailing, except themed merchandise, pre-packaged snacks and non-alcoholic containerized beverages within the Terminal under the terms and conditions of this Agreement.

CONCESSIONAIRE, its affiliated entities, subsidiaries, employees, agents, representatives, Sublessees, contractors, and subcontractors, shall not transact or otherwise engage in any other activities, business, and/or services on or from the Premises or elsewhere in the Terminal, except as described in this Agreement, unless such is provided by a separate written approval, or amendment to this Agreement, and subject to approval by AUTHORITY.

4.02 - Prohibited Uses of Premises

As consideration for this right and privilege, CONCESSIONAIRE agrees to reasonably use and is hereby obligated to maintain and operate said Premises in accordance with the terms and conditions set forth herein. The Premises shall not be used for any other Commercial Business or Commercial Activity not specifically authorized in this Agreement, unless approved in writing by the AUTHORITY. The following activities, operations, services and concessions shall be specifically prohibited on or from the Premises or any other location on Airport Property:

- (a) Commercial (*for hire*) ground transportation;
- (b) Automobile sales;
- (c) Automated food and beverage or non-food and beverage vending machines (*excluding food and beverage vending machines within Exclusive Premises shielded from public view, and intended and used only for CONCESSIONAIRE's employee use and benefit*);
- (d) Commercial paid parking;
- (e) Commercial hotel or lodging;
- (f) Massage services;

- (g) Shoe shine services;
- (h) Sale of non-food and non-beverage gifts, sundries, news
- (i) Bag “skycap” porterage services;
- (j) Storage or shipping services;
- (k) Sale, trade or bartering of fuel or lubricant products;
- (l) Revenue-producing communication systems or systems not directly applicable to CONCESSIONAIRE’s operations on the Premises;
- (m) Commercial advertising (*other than on Premises, and then only to the extent it is directly promoting CONCESSIONAIRE’S own products and services*);
- (n) No banners shall be displayed or installed by CONCESSIONAIRE on Airport Property;
- (o) Any activity considered by AUTHORITY to not be aviation purposes or purposes incidental or related thereto in connection with the Commercial Activity of a Food and Beverage Concession.

In addition to such other prohibitions as stated in this Agreement, CONCESSIONAIRE shall not (i) place a load on any floor in the Airport which exceeds the floor load per square foot which such floor was designed to carry; (ii) install any public address or paging or other audio system on the Premises (in order to avoid possible interference with Airport paging or other audio systems) without the prior written consent of the AUTHORITY; (iii) allow any smoking on the Premises; (iv) install any additional locks or security systems of any kind on doors or windows without the prior written consent of the AUTHORITY; (v) conduct its operations in a manner that deprives the public of its rightful, equal, and uniform use of the Airport Property; or (vi) conduct its operations in such a way as to hinder police, fire-fighting or other emergency personnel in the discharge of their duties or as to constitute a hazardous condition that would increase the risks normally attendant upon the operations contemplated under this Agreement.

The privilege to occupy the Premises is solely for the purpose of operating the Food and Beverage Concession described in this Agreement. Without prior written permission, CONCESSIONAIRE expressly agrees that it may under no circumstances sell or offer to sell, or otherwise provide any services, merchandise or products other than those permitted in this Agreement, and that breach of this restriction will place CONCESSIONAIRE in default hereunder.

5. CONCESSION FEES AND OTHER PAYMENT OBLIGATIONS

5.01 - Concession Fees

Interim Term

No Concession Fees will be due during the Interim Term of this Agreement.

Initial Term and Option Term

During the Initial Term of this Agreement and the Option Term if exercised, the CONCESSIONAIRE shall pay to AUTHORITY annual Concession Fees in twelve (12) equal monthly installments, which shall be the GREATER of:

- (1) The amount of three hundred thousand dollars (\$300,000) which sum is the Minimum Annual Guarantee (MAG) for the first Contract Year; **and**
- (2) For the second and subsequent Contract Years, an amount equal to the greater of
(a) eighty-five percent (85%) of the aggregate Concession Fees paid by CONCESSIONAIRE during the immediately preceding Contract Year; however, in no event shall the MAG for the next ensuing Contract Year be less than the MAG for the previous Contract Year of this Agreement; **or**
- (3) Concession Fees are established in the table below for annual Gross Revenues of duly reported by CONCESSIONAIRE to AUTHORITY:

FOOD AND NON-ALCOHOLIC BEVERAGES	
Annual Revenues	Concession Fees
\$0 - \$3,000,000	10%
\$3,000,001 - \$3,250,000	11%
\$3,250,001 - \$3,500,000	12%
\$3,500,001 - \$3,750,000	14%
\$3,750,001 and higher	15%

ALCOHOLIC BEVERAGES	
Annual Revenues	Concession Fees
\$0 - \$750,000	12%
\$750,001 - \$850,000	13%
\$850,001 - \$1,000,000	14%
\$1,000,001 – and higher	16%

Notwithstanding the Concession Fee language set forth above, in the event the Initial Term or Option Term commences on a Day other than the first Day of a calendar month, then Concession Fees, but no MAG, shall apply for such initial partial month.

The applicable Concession Fee shall be due and payable by LESSEE to LESSOR on the fifteenth (15th) day of each and every month following the month of activity and shall be delinquent if not received by LESSOR on or before the last day of the month following the month of activity. If the total paid Concession Fee increments for the Contract Year are more than the greater of the total percentage of Gross Revenues or the MAG for the Contract Year in its entirety, the LESSOR will credit such excess to amounts due from LESSEE during the following period until such excess is completely applied against such amounts. Any payment shortfall shall be paid within sixty (60) days after the completion of the Contract Year.

5.02 - Expiration or Termination of Agreement

In the event of the expiration or other termination of this Agreement on a date other than the completion of a Contract Year, the MAG shall be prorated as appropriate.

5.03 - Annual Reconciliation and Adjustment of Concession Fees

The Concession Fees as set forth in this Section shall be subject to reconciliation at the end of each Contract Year pursuant to the terms of this Agreement. If said reconciliation shows a balance due to AUTHORITY or an excess paid by CONCESSIONAIRE, the appropriate adjustment, either payment by CONCESSIONAIRE of the balance due or credit by AUTHORITY to CONCESSIONAIRE of the excess payment, shall be made within thirty (30) Days after an approved Annual Report, as required in Section 8.03 hereof, is received by AUTHORITY. CONCESSIONAIRE shall not be entitled to interest on the amount credited or owed by AUTHORITY to CONCESSIONAIRE.

5.04 - Passenger Traffic Adjustment

If CONCESSIONAIRE is in full compliance with the terms, covenants and conditions set forth herein and the following condition exists, CONCESSIONAIRE may through the Director, in writing, for a specified period, adjust the requirement to pay the Minimum Annual Guarantee as provided for herein, as set forth below.

If the actual number of passengers enplaning on scheduled airline flights at the Airport during any three (3) consecutive calendar months shall be less than eighty percent (80%) of the number of such enplaning passengers in the same consecutive calendar months during the preceding year or the year preceding the first Contract Year, a proportionate adjustment of the Minimum Annual Guarantee shall occur. Such proportionate adjustment shall be determined by reducing one-twelfth (1/12th) of the Minimum Annual Guarantee for each qualifying month by the applicable percentage reduction in enplaned passengers at the Airport for such month. The Concession Fees obligation shall remain in

effect. Such proportionate reduction of the one-twelfth (1/12th) Minimum Annual Guarantee payment shall be discontinued when the enplaned passengers for a calendar month equal or exceed eighty-five percent (85%) of the enplaned passengers in the same calendar month of the preceding year or the year preceding the first Contract Year, whichever year was used in determining the adjustment.

5.05 - Support Space Rentals

CONCESSIONAIRE shall not be charged rent during the Term of this Agreement for Support Space, included in CONCESSIONAIRE's Premises, as set forth on Exhibit A.

5.06 - Additional Support Space

CONCESSIONAIRE shall be charged the standard rental rates according to the rates established by AUTHORITY's Schedule of Fees and Charges as adopted for a given year for any amount of Additional Support Space leased to CONCESSIONAIRE after the commencement of the Initial Term. The AUTHORITY may, at its sole discretion, require CONCESSIONAIRE to rent Additional Support Space if the CONCESSIONAIRE is unable to keep its equipment, goods and supplies within the Premises. Such Schedule of Fees and Charges shall be amended from time to time by action of the AUTHORITY or its delegates.

5.10 - Other Fees and Charges

It is understood and agreed by CONCESSIONAIRE that AUTHORITY may assess fees and charges to CONCESSIONAIRE according to rates established by AUTHORITY's Schedule of Fees and Charges as adopted for a given year. Such Schedule shall be amended from time to time by action of the AUTHORITY or its delegates.

6. PAYMENT SECURITY

Within thirty (30) Days of the Commencement Date, CONCESSIONAIRE, at its own cost and expense, shall cause to be made, executed and delivered to AUTHORITY a final guarantee in the form of either an irrevocable letter of credit or performance bond, the basic form issued by a company and upon terms and form approved by the Director in an amount equal to fifty percent (50%) of the MAG for the first Contract Year. Within ninety (90) Days after the commencement of each Contract Year thereafter throughout the Initial Term of this Agreement, CONCESSIONAIRE shall deliver a payment security in the same form as stated above in an amount equal to fifty percent (50%) of the MAG for that Contract Year.

Said guarantee shall provide that, in the event of CONCESSIONAIRE'S failure to pay all Concession Fees, rents, fees, interest, or other charges and obligations of CONCESSIONAIRE under this Agreement, AUTHORITY may immediately pursue all legal remedies pursuant to said guarantee. Said letter of credit or performance bond shall (1) guarantee the payment of all Concession Fees, rents, fees, interest, and other charges and obligations of CONCESSIONAIRE

under this Agreement; (2) remain in effect throughout the Term of this Agreement including any hold-over period, if any, and (3) be approved by the Director. This remedy shall be cumulative and may be exercised by the AUTHORITY in addition to any other rights or remedies allowed by law or set forth in this Agreement. Failure to pursue such legal remedies pursuant to said guarantee or any delay in AUTHORITY'S pursuit of said remedies shall not be deemed a waiver of such rights.

7. PAYMENTS

7.01 - Payment Procedure

CONCESSIONAIRE shall make all payments to the Wichita Airport Authority, and in a form acceptable to AUTHORITY. Automated Clearing House (ACH) direct deposit is preferred. Bank account and routing information is available upon request. Payments made by check shall be delivered or mailed to:

Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209

or such other address as designated by AUTHORITY in writing.

7.02 - Late Payments

In the event CONCESSIONAIRE fails to make payment within ten (10) days of the dates due as set forth in this Agreement, then AUTHORITY may charge CONCESSIONAIRE a monthly service charge of one and one-half percent (1.5%) for any such overdue amount, plus reasonable attorneys' and administrative fees incurred by AUTHORITY in attempting to obtain payment.

8. GROSS REVENUES

8.01 – Definition of Gross Revenues

Gross Revenues shall mean, for all purposes in this Agreement, all monies received by or due to CONCESSIONAIRE, its Sublessees or any other person conducting sales to customers in, at or from the Premises for cash, credit or otherwise, without reservation or deduction for uncollected amounts, credit card fees or charges, or collection costs, including, but not limited to:

- a) All sales and services occurring on the Premises, including all orders that originate in, at, or from the Premises, regardless of where delivery or performance is made;

- b) Orders that are made to and/or filled from the Premises pursuant to mail, telephone, fax, catalog, internet, or otherwise received, filled, or distributed from the Premises;
- c) Any income resulting from transactions originating in, at, or from the Premises, and deposits not refunded to customers; and
- d) Compensation of any kind received from a distributor or manufacturer for promoting or advertising any product on the Premises or elsewhere at the Airport.

“Gross Revenues” of CONCESSIONAIRE, its Sublessees and any other person selling goods or services for a profit in, at or from the Premises shall exclude:

- a) All credits or refunds made to customers under such generally acceptable terms and conditions as are first approved in writing by the AUTHORITY;
- b) All sums or credits received in settlement of claims for loss or damage to merchandise;
- c) All sales taxes, retailers’ excise taxes, gross revenues taxes, transaction taxes, or similar equivalent taxes paid to or collected by or payable by CONCESSIONAIRE, its Sublessees or any other person selling goods or services for a profit in, at or from the Premises, as are first approved in writing by the AUTHORITY as excludable items;
- d) The amount of any gratuities paid or given by patrons or customers to or for employees of CONCESSIONAIRE, its Sublessees or any other person selling goods or services for a profit in, at or from the Premises; and
- e) Receipts from the sale or trade-in of any furniture, equipment or utensils used in, and waste or scrap materials resulting from, Food and Beverage Concession operations.

8.02 – Gross Revenues Reporting Requirement

CONCESSIONAIRE shall submit to AUTHORITY a report (“Gross Revenues Report”) showing, with respect to the prior month, a listing of Gross Revenues from each individual Concession Facilities Space. Such report shall be in form and substance satisfactory to the Director. The Gross Revenues Report shall conform to the reporting requirements as shown in Exhibit B. Subsequent to the execution of this Agreement, changes may be made to Exhibit B, under the authority of the Director, without requiring formal amendment to the Agreement.

8.03 – Gross Revenues Due Date of Monthly Report

A report of CONCESSIONAIRE’S Gross Revenues for the previous month shall be due and submitted to the AUTHORITY on or before the fifteenth (15th) day of the month on the form as identified on Exhibit B, which is attached hereto, or a substitute form approved in writing by the Director. The parties acknowledge that the AUTHORITY incurs additional administrative effort if CONCESSIONAIRE’S Gross Revenues Reports are not complete and received by the due date of each report. To compensate the AUTHORITY for this administrative effort, CONCESSIONAIRE agrees to pay the AUTHORITY fifty dollars (\$50) monthly for each monthly report which is not complete, accurate, and received by its due date. Moreover, said amount shall be considered additional compensation and shall become due and payable to, and

received by, AUTHORITY on or before the last day of each month of the Term hereof until the monthly report is received.

8.04 - Annual Report

No later than one hundred twenty (120) days after the end of each Contract Year, CONCESSIONAIRE shall furnish to the AUTHORITY the written statement of a Certified Public Accountant stating that the Concession Fees paid by the CONCESSIONAIRE to the AUTHORITY pursuant to this Agreement during each such Contract Year are accurate. Such statement shall also state Gross Revenues as shown on the books and records of CONCESSIONAIRE that were used to compute the Concession Fees paid to the AUTHORITY during the period covered by the statement. To compensate the AUTHORITY for this administrative effort, CONCESSIONAIRE agrees to pay the AUTHORITY fifty dollars (\$50) monthly for each monthly report which is not complete, accurate, and received by its due date. Moreover, said amount shall be considered additional compensation and shall become due and payable to, and received by, AUTHORITY on or before the last day of each month of the Term hereof until the report is received.

9. BOOKS AND RECORDS

9.01 – Bookkeeping

CONCESSIONAIRE covenants and agrees that for the purposes of ascertaining the amount payable as Concession Fees, it shall keep on the Premises proper books, records, and accounts in accordance with generally accepted accounting principles which shall show all sales made and services performed of any nature whatsoever, for cash, credit, or any other consideration which shall accurately reflect Gross Revenues. CONCESSIONAIRE agrees to operate its business so that for each sale, service or transaction whatsoever (1) a duplicate sales slip, or (2) contract serially numbered, or (3) any other form of documentation, is issued and prepared so that AUTHORITY can rely upon CONCESSIONAIRE'S accounting and internal control processes for accurately reporting Gross Revenues.

9.02 - Tax Reports

Upon request, CONCESSIONAIRE shall furnish AUTHORITY within fourteen (14) Days, accurate and exact copies of all sales and excise tax reports made to the Kansas Department of Revenue.

10. AUDIT

10.01 - Audit Rights

CONCESSIONAIRE agrees to give AUTHORITY or its designated examiner(s) access during reasonable hours for inspection of CONCESSIONAIRE'S books and records. The AUTHORITY shall have the right at any time and from time to time to inspect all of the records and books of account of CONCESSIONAIRE and also any records and books of account of any of CONCESSIONAIRE's Sublessees. The subject of the audit shall include, but is not limited to, Gross Revenues, and the CONCESSIONAIRE, upon request, shall make all such information available for such inspection. Such books, ledgers, accounts and records shall be available for inspection by AUTHORITY at all reasonable business hours for a period of three (3) years from the date of such activity. CONCESSIONAIRE shall produce such books and records for inspection at its Premises or within the City of Wichita ("City") within fourteen (14) Days of AUTHORITY'S written notice to do so. If CONCESSIONAIRE fails to produce all of the requested books or records on a timely basis, CONCESSIONAIRE shall pay a fifty dollar (\$50) penalty per Day for each Day in excess of the fourteenth (14th) Day after AUTHORITY's written notice up until the books and records are produced. As an alternative, CONCESSIONAIRE may elect to pay all reasonable expenses including, but not limited to, professional fees, transportation, food and lodging necessary for an examiner selected by AUTHORITY to inspect said books and records at a site other than Wichita, Kansas if AUTHORITY is notified in writing of CONCESSIONAIRE'S option to elect the alternative by doing so within ten (10) Days from date of notice.

10.02 - Audit Results

If, as a result of such inspection, it is established that CONCESSIONAIRE has understated Gross Revenues or business transacted for any Contract Year by three percent (3%) or more (after deductions and exclusions provided for herein), the CONCESSIONAIRE shall promptly pay to AUTHORITY the full cost of such inspection in addition to any additional Concession Fees owed but not theretofore paid, with any applicable interest thereon at the rate of one and one-half percent (1.5%) per month from the end of the month in which the discrepancy(ies) occurred. If, as a result of such inspection, it is established that CONCESSIONAIRE has overstated Gross Revenues, any overpayment of Concession Fees theretofore made by CONCESSIONAIRE shall be credited against Concession Fees next becoming due hereunder or otherwise refunded if this Agreement has ended.

11. PERFORMANCE STANDARDS

CONCESSIONAIRE is required to provide the highest product quality, customer services, and Concession Facilities Space to the Airport patrons at all times. The AUTHORITY and CONCESSIONAIRE agree that CONCESSIONAIRE shall observe the following Performance Standards in addition to those contained elsewhere in this Agreement.

11.01 - General Service Standards

CONCESSIONAIRE shall furnish all services provided hereunder on a fair and reasonable and non-discriminatory basis to all users of the Airport and the general public. The CONCESSIONAIRE'S operations must be conducted in a safe, clean, orderly, and inviting condition at all times and service shall be prompt, courteous, efficient and satisfactory to the AUTHORITY. Further, CONCESSIONAIRE agrees that it shall make available for sale during the daily course of operation of the Concession Facilities Space all products and services necessary to meet the needs and desires of the traveling public and CONCESSIONAIRE shall not remove items or services from its approved product list without prior written consent of the Director.

In the event the Premises are operated as a name brand facility by CONCESSIONAIRE pursuant to a license or franchise, CONCESSIONAIRE shall fully comply with all the standards of the licensor or franchisor and provide all signature products, perform all of the terms and conditions of such license or franchise, and keep such license or franchise in full force and effect. No brand, license or franchise change shall be made without prior written consent of the Director.

CONCESSIONAIRE understands and agrees that its operation at the Airport necessitates the rendering of the following public services: making reasonable change, giving directions, and assisting the public generally, and shall do so in a manner as to positively represent the Airport and the local community.

No public or private auction, fire, going out of business, bankruptcy or similar types of sales shall be conducted in or from the Premises. The Premises shall be used only in a dignified and ethical manner, consistent with the general high operating standards at the Airport.

11.02 -Hours of Operation

Hours of Operation. The Concession Facilities at each location and on each day, shall be open for business seven (7) days a week, including holidays, except as may be otherwise be approved in writing by the Director. CONCESSIONAIRE shall operate during those hours as are necessary to adequately serve the public demand, as said demand may be determined and re-

determined by the Director. CONCESSIONAIRE may advise the Director regarding optimum hours of operation at each location, but such advice is not binding on the Director.

Minimum Hours of Operation. CONCESSIONAIRE shall be obligated to operate the facilities for the hours which are defined in this Section until such time as the Director requests that hours be extended or authorizes hours to be altered. The initial minimum hours each day shall be as follows:

Concession Facilities Space shall open for business no later than one and one-half
(1.5)
hours prior to the first flight of the day and shall remain open until after the last
departure of the last scheduled flight of the day.

Curtailment or Modification of Hours Beyond Control. CONCESSIONAIRE may be excused from its obligations to meet the stated Minimum Hours of Operation in the event that its operations are closed or curtailed, in whole or in part, by reason of a strike, lockout or a cause beyond its reasonable control as determined by the Director. The Director shall not consider labor shortage or “no show” as a basis for “beyond the reasonable control” of the CONCESSIONAIRE to comply with the provisions of this Section.

Director May Alter Hours. The Director shall have the option to make changes to the CONCESSIONAIRE’s hours of operations for any location with seventy-two (72) hour prior written notice and CONCESSIONAIRE shall comply with said hours. The hours of operation must be conspicuously posted at the Premises in a manner approved by the Director. The Director may, from time to time, authorize a later opening or earlier closing time for any location, provided it first finds that CONCESSIONAIRE has submitted adequate justification therefore.

11.03 - Menus

CONCESSIONAIRE’S approved menus are attached as Exhibit D. CONCESSIONAIRE shall be allowed to make changes in the menus provided such menu changes are in keeping with the quality and original concepts included in its Proposal and shown on the attached Exhibit F. Concept changes must be approved in writing by the Director. CONCESSIONAIRE shall submit to the Director proposed new menus when menu changes are proposed. Upon approval by the Director, such new menus will then become the new Exhibit D, automatically replacing and superseding the old menu, under the authority of the Director, without requiring formal amendment to the Agreement.

11.04 - Reasonable Pricing

CONCESSIONAIRE shall observe Reasonable Pricing of goods and services. Reasonable Pricing shall mean that the regular price of the good or service offered at the Airport shall be within 10% of the price of substantially similar goods or services at a non-Airport food and beverage establishment within a twenty mile radius of the Airport that provides Commercial Activity substantially similar in quality to the CONCESSIONAIRE and as mutually agreed to by both the AUTHORITY and CONCESSIONAIRE.

(a) Same Business, Franchise or Trade Name

If a good or service is offered by the same business, franchise, or trade name as the CONCESSIONAIRE'S Commercial Activity within a twenty-mile radius of the Airport, Reasonable Pricing shall mean an amount not more than 110% of the amount of the same item(s) offered at the non-Airport location(s). Sale or promotional prices shall be excluded.

(b) No Same Business, Franchise or Trade Name

If a good or service is not offered from an entity of the same business, franchise, or trade name as stated in (a) above, Reasonable Pricing shall mean not more than 110% of the average of three (3) separate businesses of comparable nature, ambiance, product and service lines within a twenty mile radius of the Airport. The comparable locations to be used for price comparison purposes shall be agreed to by AUTHORITY and CONCESSIONAIRE, and shall become effective on written approval. Comparable locations shall not include: (1) discounters such as Wal-Mart, Target, K-Mart, Sam's Club, or similar businesses; (2) hotels; or (3) stadiums, race tracks, arenas or special event facilities.

(c) Price Verification

The AUTHORITY reserves the right to conduct its own verification at any time to ensure that CONCESSIONAIRE is in compliance with the Reasonable Pricing policy set forth herein. No more than twice per twelve (12) month period, the AUTHORITY may select at random ten to fifteen items for which CONCESSIONAIRE will be required to perform and submit to the AUTHORITY a price comparison from approved, comparable facilities.

(d) Non-Compliance

CONCESSIONAIRE hereby acknowledges that a determination of noncompliance with this Reasonable Pricing provision shall be considered a disapproval of product and service pricing. CONCESSIONAIRE agrees that in the event of such determination and notice from the AUTHORITY, CONCESSIONAIRE shall modify its product and service prices to meet the approval of the AUTHORITY, said adjustment to be effective within ten (10) calendar days of written notification by the AUTHORITY. If CONCESSIONAIRE fails to comply with the AUTHORITY'S determination notice, AUTHORITY shall have the right to terminate this Agreement in its entirety and all

rights ensuing there from upon giving thirty (30) days written notice to CONCESSIONAIRE.

(e) Employee Discounts

It is expressly understood that CONCESSIONAIRE may allow customary discounts on sales of food and non-alcoholic beverage items to Airport and airport tenant employees, as approved by the AUTHORITY.

11.05 - Noise, Odor, Vibrations and Annoyances

CONCESSIONAIRE shall conduct its operations in an orderly and proper manner so as not to commit any nuisance or waste in the Premises or annoy, disturb, or be offensive to others in the Terminal or other parts of the Airport, and shall take all reasonable measures, using the latest known and most practical devices and means, to eliminate any unusual, nauseous or objectionable smoke, gases, vapors, odors, or any vibrations. No loud or inappropriate music will be played at the Premises. CONCESSIONAIRE'S employees must conduct themselves in a professional manner at all times and shall provide the highest level of service possible to all Airport patrons.

11.06 - Manager

The operation and management of the Premises shall be under the constant and direct supervision of a well-trained, qualified, and experienced manager employed by CONCESSIONAIRE. CONCESSIONAIRE'S manager shall be a full-time active, on-site, qualified, experienced, and competent Manager with the complete responsibility and authority to respond quickly and decisively to the Director in all matters affecting the operation of the Food and Beverage Concession. CONCESSIONAIRE shall at all times ensure, in the absence of the Manager, that a qualified Assistant Manager or supervisor is available and empowered to act quickly and decisively in response to any need arising from the operation of the Food and Beverage Concession.

11.07 - Staffing

CONCESSIONAIRE shall implement and cause its Sublessees to implement, personnel policies that will provide that non-managerial personnel currently employed in the existing food & beverage concession facilities as of the date of award of the Agreement, will be given first consideration in hiring as personnel of CONCESSIONAIRE, subject to reasonable hiring standards, in the event the incumbent food and beverage concessionaire does not succeed itself.

CONCESSIONAIRE shall recruit, train, supervise, direct and deploy an adequate number of proficient employees to ensure the highest standards of customer service and satisfactory

operation and maintenance of the Premises at all times. CONCESSIONAIRE'S service shall be timely, attentive, and friendly. All customers shall be thanked for patronage.

CONCESSIONAIRE shall provide appropriate staffing levels to accommodate changes in peak periods of passenger activity and shall add an appropriate number of employees to respond to increased levels in potential customers resulting from changes in the airline schedules or relocation of airline gates. CONCESSIONAIRE should anticipate peak travel seasons such as Spring Break, Thanksgiving, Christmas, and other holidays, and add additional staff accordingly.

At no time shall the Premises be left unattended or temporarily closed while employees go on break, receive deliveries, or for other such reasons unless otherwise previously approved by the Director in writing. If in the opinion of and at the discretion of the Director, and upon issuing notice to the CONCESSIONAIRE, local management and leadership, performance standards or other obligations of this Agreement are not consistently met, the CONCESSIONAIRE shall promptly take measures to correct and remedy such deficiencies to the Director's satisfaction, which may include but not be limited to local management change.

All employees of CONCESSIONAIRE who come in contact with the public shall be clean and well groomed, neat, professional, non-offensive odor, and courteous. All CONCESSIONAIRE employees shall be appropriately attired in company provided clean and correctly fitted uniforms or company approved attire. CONCESSIONAIRE employees that interact with customers must wear an identification name tag at all times, subject to the Director's approval, which shall clearly state CONCESSIONAIRE'S company name and the individual employee's name.

11.08 - No Soliciting

CONCESSIONAIRE shall not give samples, approach customers or otherwise solicit business in the Common Use areas or any other part of the Airport other than the Premises. CONCESSIONAIRE shall not distribute any handbills or other advertising matter in the Common Use areas or any other Airport Property other than in the Premises without the prior written consent of the Director.

11.09 - Cash Handling Procedures

CONCESSIONAIRE shall provide and use modern, efficient cash handling equipment, including electronic or computerized cash registers. All cash control equipment shall have a non-resettable grand total to allow for a complete and accurate audit trail. CONCESSIONAIRE shall at all times maintain and follow financial control standards and procedures ensuring that all transactions are properly recorded and that all receipts are promptly deposited and reconciled. CONCESSIONAIRE shall ensure, through continuous review and inspection, that such standards and procedures are fully and accurately implemented within its operations. CONCESSIONAIRE shall provide its customers with a cash register receipt for each sale, and such receipt shall show

CONCESSIONAIRE'S name, the item (or items) sold, tax, and total cost. Processing of payments from customers shall be prompt.

11.10 - Traveler's Checks, Credit Cards and Debit Cards

CONCESSIONAIRE shall accept traveler's checks, debit cards, and no fewer than three (3) major credit cards for purchases and shall not levy any additional charges for the acceptance thereof.

11.11 - Complaints and Concerns

At the Director's request, CONCESSIONAIRE shall meet with the Director to review any complaints or concerns that may arise, and shall promptly correct any deficiencies. The Director's determination as to quality of operation or services shall be conclusive and curative measures shall be implemented by CONCESSIONAIRE as expeditiously as possible.

CONCESSIONAIRE shall meet and confer with the Director in the event of a dispute between CONCESSIONAIRE and any other tenant at the Airport as to services offered or products to be sold. The determination of the Director shall be final as to the services to be offered or products to be sold by each tenant at the Airport and CONCESSIONAIRE agrees that it shall be bound by said determination.

CONCESSIONAIRE shall respond in writing to all written customer complaints within forty-eight (48) hours of receipt and shall concurrently provide copies of such written correspondence to the Director.

11.12 - Mystery Shopper

The AUTHORITY may monitor, test, or inspect CONCESSIONAIRE'S service at any time by Airport Staff, or through the use of a responsible shopping service or by other commercially reasonable means that do not unduly interfere with CONCESSIONAIRE'S business.

11.13 - Deliveries

CONCESSIONAIRE shall receive all truck deliveries at the loading dock on the west end of the Terminal or other location as specifically authorized by the AUTHORITY. CONCESSIONAIRE is prohibited from allowing, accepting or causing to be accepted any deliveries upon roadways in front of the Terminal. Delivery of supplies to the Premises shall be made at such times, and by such routes/modes, as not to conflict with foot traffic, concession patrons or Airport operations in general. Such routes/modes and times of delivery are subject to the approval of the Director.

11.14 - Non-Interference with Utilities

CONCESSIONAIRE shall do nothing, and shall permit nothing to be done, that could interfere with the drainage or sewerage systems, fire hydrants, heating and air conditioning (“HVAC”) systems, electrical systems, domestic hot water, domestic cold water, gas, fire suppression systems, fire alarm system, plumbing, phone systems or radio transmissions on the Premises or elsewhere at the Airport. CONCESSIONAIRE shall promptly report any damage or interference, actual or reasonably suspected to the Airport.

11.15 - Fire Extinguishers

CONCESSIONAIRE shall furnish and maintain on the Premises sufficient size, quantity and category of portable fire extinguishing units as may be require by state and local laws and insurance risks or as designated by the AUTHORITY.

11.16 - Sanitation

CONCESSIONAIRE shall comply with all local and State Department of Health and Environment sanitation rules and regulations and must maintain the Premises in a clean and sanitary manner at all times. Copies of all Department of Health and Environment facilities inspections shall be submitted to the Director within five (5) business days of receipt. CONCESSIONAIRE agrees to notify the Director immediately upon receiving any failing inspection. CONCESSIONAIRE shall immediately, at its own expense, remedy any service or training deficiency, make all required repairs or maintenance and resolve any other type of neglect. The parties agree that the date of any regulatory inspection in which deficiencies are noted shall commence the thirty-(30) day curative period under Section 24 - Termination By Authority In Event Of Default, and that no separate notice from AUTHORITY, as described in Section 24 shall be necessary.

11.17 - Garbage/Refuse Storage and Removal; Pest Control

CONCESSIONAIRE shall strictly comply with Rules, Regulations and Code and any other applicable rules and regulations regarding the disposal of trash and garbage and the recycling of such materials. CONCESSIONAIRE shall promptly remove from the Premises to the garbage or refuse disposal area all rubbish, refuse and garbage, and shall remove the accumulation of all such material in said garbage or refuse disposal area at frequent intervals. Accumulation of trash, refuse, boxes, cartons, barrels, or other similar items shall not be permitted. In transporting trash and refuse from the Premises, CONCESSIONAIRE shall use only carts or equipment that are covered, leak-proof, and equipped with wheels suitable for operating on carpet without damage thereto. CONCESSIONAIRE specifically agrees to participate in the AUTHORITY’S recycling program to the greatest extent possible.

In addition, CONCESSIONAIRE shall make provision for extermination services, as necessary, and for regular cleaning of plumbing, grease traps and stove hoods.

11.18 – Portable Storage Containers/Structures

Unless specifically approved in writing, and under conditions specified by AUTHORITY, CONCESSIONAIRE shall not place or allow to be placed upon Airport Property, any type of portable storage container, trailer, unit, box, or barrel which is used to store merchandise and/or equipment and supplies outside of an enclosed permanent building or structure, which does not qualify as a building or structure under Title 18 of the Code of the City of Wichita. Unless specifically approved, and under conditions specified by AUTHORITY, CONCESSIONAIRE shall not place or allow to be placed upon Airport Property, any type of portable or temporary structure, trailer, mobile home, modular structure or device.

AUTHORITY shall not unreasonably withhold approval of such container(s) and structure(s) if such is of a temporary nature for the purpose of supporting construction, alteration or improvement activity, or other approved project.

12. MAINTENANCE AND REPAIRS

12.01 - CONCESSIONAIRE'S Maintenance and Repair Obligations

CONCESSIONAIRE shall be obligated, without cost to the AUTHORITY, to maintain the Premises and every part thereof and all Improvements therein, together with all Personal Property, fixtures, mirror glass, walls, ceilings, lighting, floors, equipment, and personal property therein, in good repair, safe condition, and in a clean and orderly condition and appearance at all times. CONCESSIONAIRE shall keep the areas immediately adjacent to the exits and entrances of the Premises clean, safe and orderly and free of displays, imperfections and obstructions, and shall promptly notify AUTHORITY of any safety hazards it observes near such exits/entrances on surfaces that are the responsibility of the AUTHORITY to maintain. Maintenance of the Premises shall include, without limitation:

- a) the cleaning and repair of all doors, entrances, gates and interior glass surfaces, counters, interior walls, ceilings, lighting, floors and floor coverings, decor, speakers, signage and equipment;
- b) re-lamping and repair of electrical lighting fixtures and receptacles within the Premises;
- c) routine repair, maintenance, and cleaning of air intake and distribution ceiling panels serving the Premises;
- d) all maintenance and repair of any cooling or smoke removal (or neutralizing) units installed by CONCESSIONAIRE;
- e) routine repair and maintenance, including grease removal and cleaning of all drains, traps, pipes, grease interceptors, exhaust hoods, ventilation fans, and main grease drain line from Premises to grease interceptor; (Documentation verifying the scheduled &

periodic cleaning of the exhaust hoods shall be made available to the Authority upon request);

- f) maintenance and repair of all plumbing fixtures, pipes, drains, traps, and valves located in the Premises.
- g) maintenance and repair of grease drain line and grease interceptor in the Terminal as well as a ten (10) foot perimeter around the Terminal, of those lines and grease ducts that are dedicated to the CONCESSIONAIRE.
- h) cleaning of any service corridors serving the Premises, whenever such service corridors are dirty as a result of the actions of CONCESSIONAIRE, its Sublessees or its vendors/service providers;
- i) maintenance and repair, including maintenance contracts, for equipment, furniture and fixtures owned by AUTHORITY, if any, provided to CONCESSIONAIRE and repair of Personal Property owned by CONCESSIONAIRE;
- j) periodic inspections of such items as fire suppression system, emergency exit lighting, automatic shut off for natural gas and water, etc. (Inspection tags for suppression systems shall be displayed at all times for the Authority to review);
- k) Walls shall be painted or covered in the Premises no less frequently than every five (5) years or sooner when no longer capable of being adequately cleaned and/or when worn; and
- l) Carpeting/flooring shall be replaced in the Premises no less frequently than every five (5) years or sooner when no longer capable of being adequately cleaned and/or when worn.

CONCESSIONAIRE shall be responsible for the removal and disposal of garbage, debris, contaminants and any other waste material (whether solid or liquid) arising out of its occupancy of the Premises, and outside the Premises or resulting from its activities and operation. Such removal shall conform to all governmental requirements and regulations as more fully described herein. Such removal and disposal of garbage, debris, contaminants, or other waste material is understood to include routine clean-up of the Premises. CONCESSIONAIRE shall immediately react and take prompt corrective actions to remove and dispose of any paper, garbage and debris on Premises, and outside the Premises resulting from its activities and operations, upon demand of AUTHORITY.

CONCESSIONAIRE shall be responsible for all custodial service and care in and upon the Premises, including janitorial service, floor care, daily routine clean-up and trash removal to maintain the Premises in good, tenantable and highly professional condition and appearance at all times.

The AUTHORITY shall be the sole judge of the quality and timeliness of CONCESSIONAIRE'S maintenance and repairs. The AUTHORITY may at any reasonable time, without notice, enter the Premises to determine if satisfactory maintenance and repairs are being performed. If AUTHORITY determines that maintenance and repairs are not satisfactory,

AUTHORITY shall so notify CONCESSIONAIRE in writing. If said maintenance and repairs are not properly performed by CONCESSIONAIRE within ten (10) calendar days after receipt of written notice from AUTHORITY, or such longer time as may be contained in the written notice, then AUTHORITY or its agents shall have the right to enter upon the Premises and perform the maintenance and repairs therefore and CONCESSIONAIRE agrees to promptly reimburse AUTHORITY for the direct costs thereof, plus twenty percent (20%) for administrative overhead.

Notwithstanding the above provision, any hazardous or potentially hazardous condition shall be corrected immediately when detected by CONCESSIONAIRE or upon receipt by CONCESSIONAIRE of verbal or written notice given by AUTHORITY. At the direction of the AUTHORITY or other proper authorities, CONCESSIONAIRE shall close the Premises until such hazardous or potentially hazardous condition is removed; during the period of such closure, there shall be no proportionate reduction of the MAG unless the reason for closure was completely beyond the control of CONCESSIONAIRE, and CONCESSIONAIRE takes all necessary actions to abate the hazard as quickly as possible.

12.02 - Condition of Premises

CONCESSIONAIRE agrees to make all repairs (except for the repairs or work which are the specific responsibility of the AUTHORITY pursuant to this Agreement) to the Premises, including the Improvements and Personal Property thereon, and to maintain and keep the Premises in good and safe condition and repair, and to surrender and deliver up the same at the termination of this Agreement in as good order and condition as the same exists at the commencement of the Initial Term of this Agreement or as subsequently improved, reasonable wear and tear excepted.

12.03 – AUTHORITY’s Maintenance Responsibilities

Excluding the CONCESSIONAIRE’s Premises, AUTHORITY shall clean, maintain and operate in good condition the Terminal, excluding the CONCESSIONAIRE’s Premises, main grease line and grease interceptor, (including, but not limited to the roof and flooring of the Terminal) maintenance of main electrical and mechanical systems, maintenance of walls and ceilings. AUTHORITY shall maintain the public areas and Common Use areas in the Terminal and will provide adequate light, cold water and conditioned air. AUTHORITY agrees to make all necessary maintenance and repairs of a structural, load-bearing or flooring nature to CONCESSIONAIRE’s Premises at its own expense; provided, however, that for purposes of this Agreement such repairs shall not include repairs to any equipment and Personal Property installed by the CONCESSIONAIRE or its Sublessees and further provided that the CONCESSIONAIRE shall or shall cause its Sublessees to reimburse the AUTHORITY. If repairs are required resulting from negligent or intentional acts of the CONCESSIONAIRE, its officers, partners, employees, agents, contractors, subcontractors, licensees, Sublessees or

invitees the AUTHORITY may charge the same cost to the expense of the CONCESSIONAIRE plus twelve percent (12%) administrative fee. The administrative fee shall be applied to the total cost incurred by the AUTHORITY in performing the task. The administrative fee represents the AUTHORITY's cost to manage the task including procurement services, approval processes, management staff time, supervision and overhead. It does not include a profit component. In case of emergency action taken in order to protect against personal injury, property damage or other irreparable harm, AUTHORITY is authorized to act without notice and shall charge the same cost to the expense of CONCESSIONAIRE and a twenty percent (20%) administrative fee.

The CONCESSIONAIRE shall give the AUTHORITY written notice (or verbal notice in the event of any emergency conditions which may result in harm to the patrons of the Terminal, which verbal notice shall be followed by written notice within twenty-four (24) hours) describing any repair, which is the responsibility of the AUTHORITY. The AUTHORITY shall commence the repair process promptly after its receipt of such written notice if the AUTHORITY agrees that such repair is required and is the AUTHORITY's responsibility hereunder.

13. SIGNAGE

CONCESSIONAIRE will display only signage that has been previously approved by the Director in writing and in accordance with the AUTHORITY's TCAP. The Director, in his sole discretion, shall have the right to require CONCESSIONAIRE to immediately remove any Signs or displays that are determined to be inappropriate for the Airport. Handwritten signage is expressly prohibited from being displayed at any time.

CONCESSIONAIRE shall not erect, install, operate, nor cause or permit to be erected, installed, or operated outside of the Premises, any Signs, banners, branding or other similar contrivances for its own business, or the business of others, without the AUTHORITY's prior written approval. This provision shall not have the effect of limiting or restricting CONCESSIONAIRE's right to enter into an agreement with AUTHORITY'S authorized and permitted marketing or signage agency for the display of informational, marketing or advertising media at approved designated locations at the Airport.

14. SANCTIONS

14.01 - Sanctions

Upon CONCESSIONAIRE'S violation of the Performance Standards and other responsibilities listed in the table in Section 14.02 below, CONCESSIONAIRE may be sanctioned for such violations in the amounts identified. Sanctions may accrue immediately and without notice upon

violation. Violations must be cured at the earliest possible date. If condition of violation continues for more than two (2) calendar days after the AUTHORITY has given CONCESSIONAIRE notice of the violation, additional sanctions may be applied. Each violation occurrence shall be cumulative and expire 365 days from notification. Effects of violation shall be applied for 365 days from date of notification.

After five (5) violations in Section A or three (3) violations in Section B of the table in Section 14.02 within one calendar year (365 days), the Director reserves the right, at his/her sole option, not to impose the sanction and instead to seek any other remedies available under this Agreement, including termination of this Agreement.

If CONCESSIONAIRE believes that there were unforeseen circumstances beyond CONCESSIONAIRE'S reasonable control that caused CONCESSIONAIRE to violate the operating standards set forth herein, CONCESSIONAIRE may request that the AUTHORITY take such mitigating circumstances into consideration by submitting to the Director a written request which outlines and explains the mitigating circumstance in detail. The Director will review such request before imposing a sanction or taking any other action that he/she is entitled to take under this Agreement.

14.02 - Schedule of Sanctions

<i>Section A Violations:</i>	<i>Occurrence</i>	<i>Amount of Sanction</i>
Hours of Operation	<i>1</i>	<i>Written Notification</i>
Operations, Service Standards and Employee Standards	<i>2</i>	<i>\$200 Sanction</i>
Pricing	<i>3</i>	<i>\$400 Sanction</i>
Quality	<i>4</i>	<i>\$750 Sanction</i>
Signage	<i>5</i>	<i>\$1,000 per occurrence thereafter or default under the Agreement</i>
Interference with Utilities		
Deliveries and Vendor Access		
<i>Section B Violations:</i>	<i>Occurrence</i>	<i>Amount of Sanction</i>
Maintenance and Repairs	<i>1</i>	<i>\$250 Sanction</i>
Sanitation	<i>2</i>	<i>\$500 Sanction</i>
Hygiene and Cleanliness	<i>3</i>	<i>\$1,000 per occurrence thereafter or default under the Agreement</i>
Waste Disposal, Grease Disposal		
Recycling		
Health Code Violations		

15. UTILITIES

Facilities Installation and Upgrades. The CONCESSIONAIRE shall have the right to access utility services; including gas, water, sewer, trash collection, and electricity, which shall be made available or allowed to be made available to the Premises by the AUTHORITY. The CONCESSIONAIRE shall be responsible for upgrading any existing utilities at or upon the Premises, beyond that provided by the AUTHORITY, to the condition and capacity as may be required by the CONCESSIONAIRE. Any additional utility upgrade shall be at the CONCESSIONAIRE's sole expense, and must be approved in advance by the AUTHORITY. Should the CONCESSIONAIRE require utilities not provided by the AUTHORITY, the CONCESSIONAIRE shall, at the CONCESSIONAIRE's sole expense, install or cause to be installed such additional utilities; however, such installation shall require prior approval by the AUTHORITY.

Data Communications/Security Cable Installation. AUTHORITY is the only entity allowed to install or remove, or cause to be installed or removed, any communications cabling. Cabling includes, but is not limited to, any type of telecommunications or data cable such as CAT3, CAT5, CAT6; fiber optics cable; and/or coaxial cable. Cabling for basic phone service shall be provided and installed by the AUTHORITY. Should additional network cable, coaxial or fiber optic cable be required for CONCESSIONAIRE's operation, CONCESSIONAIRE shall request AUTHORITY to install the desired cabling, and such installation shall be at the CONCESSIONAIRE's expense. It shall be the CONCESSIONAIRE'S responsibility to contract for service using such AUTHORITY installed cables from CONCESSIONAIRE'S preferred service provider.

Utility Services. Utility services shall be provided to the CONCESSIONAIRE as additional charges, which shall include but not limited to: phone, data, electricity, gas, water, sewer, and trash disposal service. Utility services shall be provided through either the AUTHORITY, or other utility providers, and for which the CONCESSIONAIRE shall be responsible to pay separately, not as a component of rent. Payments for utility services used by CONCESSIONAIRE shall be made directly to the AUTHORITY, utility supplier or service provider. If utility service is supplied by the AUTHORITY, then CONCESSIONAIRE shall pay

those costs to AUTHORITY within thirty (30) days after receipt of AUTHORITY'S invoice. AUTHORITY agrees that any such costs invoiced to CONCESSIONAIRE shall be based upon the uniform rates charged by the AUTHORITY to other airport users.

16. TENANT IMPROVEMENTS

16.01 - Introduction

Prior to the commencement of the Initial Term, CONCESSIONAIRE shall, at its sole cost and expense, complete the construction of the Premises as described throughout this Agreement ("Project"), in accordance with the Tenant Construction and Alteration Process Manual (TCAP), which is attached hereto as Exhibit C and incorporated herein by this reference.

Except as specifically provided for herein, the CONCESSIONAIRE agrees not to construct, install, remove, modify and/or repair any of the Premises without prior written approval of the Director, such approval not to be unreasonably withheld but may be contingent upon approval by AUTHORITY of plans and specifications for the proposed work as well as other conditions considered necessary by AUTHORITY.

CONCESSIONAIRE shall submit to AUTHORITY payment and performance/maintenance bonds, in a form acceptable to the AUTHORITY, in the full amount of the Tenant Improvement costs prior to commencement of tenant finish build-out or any subsequent Tenant Improvement.

For any construction on the Premises, CONCESSIONAIRE shall purchase and maintain a builder's risk insurance policy, or require its prime contractor to carry such a policy, in a sum equal to the full project replacement value, with an insurer licensed in the State of Kansas. This coverage shall be in effect from the date of the construction notice-to-proceed and until all financial interest ceases. The Wichita Airport Authority and the City of Wichita shall be named as additional insured on such policies.

The quality, design and appearance of Tenant Improvements shall conform to the AUTHORITY'S TCAP and any other architectural design criteria, and be consistent with first-class, modern facilities. Such construction shall be performed in a good and workmanlike manner and in accordance with the plans and specifications approved for same. At all times during such construction, CONCESSIONAIRE shall have a copy of the approved plans and specifications at the Airport for inspection by AUTHORITY or other governmental agencies.

Any review or approval by the AUTHORITY of CONCESSIONAIRE'S plans or an inspection by AUTHORITY of the Project work or materials shall not be deemed to constitute a waiver or release by AUTHORITY of any obligation or responsibility of CONCESSIONAIRE hereunder, or an assumption of any risk or liability by AUTHORITY with respect thereto, and

CONCESSIONAIRE shall make no claim against AUTHORITY on account of such review, approval, or inspection.

16.02 - Construction of Tenant Improvements

CONCESSIONAIRE shall provide, construct and install on its Premises, at its sole cost and expense, all Tenant Improvements necessary and appropriate to operate its Food and Beverage Concession at the Terminal in a manner adequate to fully serve the needs of the traveling public. CONCESSIONAIRE shall use the TCAP Manual to govern its build-out activities.

All construction is subject to issuance of a certificate of occupancy from the City of Wichita-Sedgwick County Metropolitan Area Building Construction Department before occupancy and use.

CONCESSIONAIRE shall supply all Personal Property necessary for the operation of the Food and Beverage Concession. All Personal Property contained within the Premises must be of first-class quality, safe, fire resistant, attractive, in compliance with the TCAP Manual (Exhibit C), and may be installed only with the AUTHORITY'S prior written approval.

CONCESSIONAIRE shall cause all Tenant Improvements authorized herein to be constructed only by a contractor properly licensed by the State of Kansas to construct such Tenant Improvements.

CONCESSIONAIRE shall be solely responsible for payment to such contractor for all elements of such construction, and shall keep the Premises free and clear of all mechanics liens resulting from any construction thereto by or on behalf of CONCESSIONAIRE. CONCESSIONAIRE may contest the correctness or validity of any such lien, but shall indemnify, defend, and hold harmless the AUTHORITY, its elected representatives, officers, agents, and employees, and the Premises from any and all claims and liability for payment of any such lien. The AUTHORITY may file notice of non-responsibility for its lien protection.

16.03 - Approval by Director

Before the commencement of any such construction, detailed plans and specifications, including any modifications or amendments thereto requested by AUTHORITY, shall be filed by CONCESSIONAIRE with and approved, in writing, by Director and all governmental agencies and authorities having jurisdiction over such construction. CONCESSIONAIRE shall, at its sole expense, obtain all necessary licenses, permits, and approvals required for construction of the Tenant Improvements that may be required.

16.04 - Coordination of Construction

CONCESSIONAIRE shall cooperate with the AUTHORITY in the construction of Tenant Improvements. CONCESSIONAIRE agrees that all construction and installation of Tenant Improvements on Airport Property shall be accomplished without obstructive, impeding or interfering with other users of the Airport, and that CONCESSIONAIRE and its construction contractor and subcontractors shall at all times keep the construction site and surrounding areas clean, orderly, safe, free of accumulated construction debris and waste materials, and shall be solely responsible for removal of all construction debris and waste materials to a suitable licensed landfill away from the Airport.

16.05 - Permits and Temporary Utilities

CONCESSIONAIRE shall be responsible for the cost of relocations, obtaining and paying for building permits, and any temporary utilities which may be required for or during construction of the Tenant Improvements.

16.06 - Removal of Unapproved Tenant Improvements

Tenant Improvements made on the Premises without the Director's written approval as required under this Section or portions of the Tenant Improvements that are not constructed as indicated and specified on approved plans shall be considered to be unapproved Tenant Improvements constructed in violation of the provisions of this Agreement. Unapproved Tenant Improvements shall be removed by CONCESSIONAIRE, at CONCESSIONAIRE's sole expense, within thirty (30) calendar days following CONCESSIONAIRE's receipt of written notice to do so from Director.

16.07 – Removal and Demolition

CONCESSIONAIRE shall retain title to its Tenant Improvements in, at or serving the Premises for so long as such Premises are leased to CONCESSIONAIRE under this Agreement. Thereafter, the AUTHORITY, at its option, reserves the right to take immediate title to some or all of such Tenant Improvements at no cost or expense. Those Tenant Improvements to which the AUTHORITY does not take title must be removed expeditiously by CONCESSIONAIRE and, any damage caused by the removal of such Tenant Improvements must be repaired by the CONCESSIONAIRE at no cost to the AUTHORITY, unless otherwise agreed to in writing by the AUTHORITY.

All tenant finishes constructed and installed upon the Premises pursuant to the provisions of this Section shall be, and shall remain, the property of CONCESSIONAIRE unless tenant finishes are permanently affixed to the Premises, in which case these fixtures remain the sole property of the AUTHORITY. CONCESSIONAIRE shall not, however, remove any of the tenant finishes from the Premises, nor waste, destroy, demolish or alter, any of the tenant finishes on the Premises except as permitted by this Agreement. Upon expiration or earlier termination of this

Agreement, CONCESSIONAIRE shall be obligated to remove all tenant finishes constructed or installed upon the Premises unless AUTHORITY has consented that such tenant finishes may remain upon the Premises. If AUTHORITY has not provided consent that such tenant finishes remain, and if CONCESSIONAIRE fails to remove said tenant finishes within thirty (30) days following expiration or earlier termination of this Agreement, AUTHORITY shall become the owner thereof, and may exercise any and all of its legal rights or remedies, including the right, with or without legal process, to remove and dispose of said tenant finishes without notice to, or consent of, CONCESSIONAIRE. In the event AUTHORITY removes and disposes of said tenant finishes, CONCESSIONAIRE agrees to pay to AUTHORITY the cost of such disposal plus an administrative fee of twelve percent (12%). The administrative fee shall be applied to the total cost incurred by the AUTHORITY in performing the task. The administrative fee represents the AUTHORITY's cost to manage the task including procurement services, approval processes, management staff time, supervision and overhead. It does not include a profit component. In case of emergency action taken in order to protect against personal injury, property damage or other irreparable harm, AUTHORITY is authorized to act without notice and shall charge the same cost to the expense of CONCESSIONAIRE and a twenty percent (20%) administrative fee.

CONCESSIONAIRE shall not remove or demolish, in whole or in part, any Improvements upon the Premises without the prior written consent of the AUTHORITY, which may, at its discretion, condition such consent upon the obligation of CONCESSIONAIRE replacing the same by a reasonable Tenant Improvement specified in such consent. CONCESSIONAIRE shall obtain written consent before commencing demolition and restoration as described in this Section. Failure to obtain such consent shall entitle the AUTHORITY to such compensation as is necessary to restore the affected Improvements, plus a twelve percent (12%) administrative fee. The administrative fee shall be applied to the total cost incurred by the AUTHORITY in performing the task. The administrative fee represents the AUTHORITY's cost to manage the task including procurement services, approval processes, management staff time, supervision and overhead. It does not include a profit component.

In case of emergency action taken in order to protect against personal injury, property damage or other irreparable harm, AUTHORITY is authorized to act without notice and shall charge the CONCESSIONAIRE the total cost incurred by the AUTHORITY in performing the task plus a twenty percent (20%) administrative fee.

16.09 - Minimum Facility Build-Out Investment

As shown in CONCESSIONAIRE'S Proposal, CONCESSIONAIRE has committed to spend a Minimum Facility Build-Out Investment of at least \$350 (three hundred and fifty dollars) per square foot for the development of each Concession Facilities Space. This development shall include the cost of AUTHORITY-approved Tenant Improvements and Personal Property. Not

less than 85% of the Minimum Facility Build-Out Investment amounts must be expended on construction “hard costs” of materials, direct labor, equipment, finishes, signage, lighting, HVAC, and other construction costs exclusive of “soft costs” of design, engineering, construction supervision, permitting, specialist consultants, overheads, corporate construction administration, and other fees. In order to ensure that the committed investment is made, the CONCESSIONAIRE will be required to pay the AUTHORITY one hundred and twenty percent (120%) of any difference between the proposed Minimum Facility Build-Out Investment and the actual facility build-out costs. CONCESSIONAIRE shall cause the Project to be constructed in accordance with this Section. The AUTHORITY will not be responsible for costs that exceed the CONCESSIONAIRE’S proposed Minimum Facility Build-Out Investment per square foot.

16.10 - Mid-Term Refurbishment

A mid-term refurbishment minimum investment of \$75.00 per square foot at each Concession Facilities Space location is also required. This is a firm commitment to reinvest in the facilities and replace worn and damaged finishes. The refurbishment minimum is not for ordinary or deferred maintenance, which is an ongoing requirement, but is a commitment to renew and replace worn surfaces such that it would constitute additional capital investment. The refurbishment requirement, which is an obligation to be satisfied by the end of the sixth Contract Year of the Initial Term, is subject to prior consultation and approval by the AUTHORITY.

Notwithstanding the foregoing mid-term reinvestment requirement, CONCESSIONAIRE shall repaint or refinish, at CONCESSIONAIRE’S own cost, high traffic areas within the Premises subject to greater than normal wear on a schedule to be specified by CONCESSIONAIRE, or as may be required by the Director. All Tenant Improvements and Personal Property that become worn, chipped, dented, gouged or otherwise damaged, shall be repaired or replaced by CONCESSIONAIRE, at CONCESSIONAIRE’S sole expense, as soon as reasonably possible.

16.11 - Liquidated Damages for Failure to Timely Complete the Project

It is imperative that CONCESSIONAIRE is ready to open for business at all of its Concession Facilities Space locations at the commencement of the Initial Term hereof in order serve the traveling public. The failure of the CONCESSIONAIRE to complete its Tenant Improvements and open for business by the commencement of the Initial Term shall result in damages as a result of this failure. Therefore, it is agreed that as liquidated damages, CONCESSIONAIRE agrees to pay to the AUTHORITY the amount of Five Hundred Dollars (\$500.00) per Day for each Concession Facilities Space location from Opening Day until its opening date, if CONCESSIONAIRE fails to complete the Project and obtain all approvals necessary for opening all of the Concession Facilities Space locations at the commencement of the Initial Term. This amount shall be in addition to all Concession Fees and other payment obligations set forth herein.

16.12 - Certification of Costs of Tenant Improvements, Personal Property and Mid-Term Refurbishments

CONCESSIONAIRE shall provide the AUTHORITY with a Tenant Improvements Cost Statement in a format satisfactory to the AUTHORITY, including certified receipts and lien releases for its Tenant Improvements, Personal Property, and Mid-Term Refurbishments within ninety (90) Days of the completion of the construction/refurbishment to confirm the amount of the investments.

16.13 – As-Constructed Record Drawings

Within sixty (60) Days after construction completion, CONCESSIONAIRE shall furnish to the AUTHORITY one (1) complete set of electronic AutoCAD format Record Drawings and one (1) complete set of either pdf, dwf, or tif files showing the “as-constructed” Tenant Improvements. Record Drawings shall be dated and stamped by the engineer or architect of record. If by the sixtieth (60th) day after construction has been completed CONCESSIONAIRE fails to submit “as-constructed” drawings, CONCESSIONAIRE shall pay penalties in the amount of one hundred dollars (\$100.00) per Day until such a time when drawings have been submitted.

17. ENVIRONMENTAL COVENANTS

17.01 - CONCESSIONAIRE’s Indemnification

The CONCESSIONAIRE hereby covenants that it shall not cause or permit any Hazardous Material(s) to be placed, held, located, or disposed of, on, under or at any portion of the Airport Property except the Premises, and then only in the ordinary course of business and in compliance with all applicable laws.

In furtherance and not in limitation of any indemnity elsewhere provided in this Agreement to the AUTHORITY, the CONCESSIONAIRE hereby agrees to indemnify and hold harmless the AUTHORITY and the City from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys’ fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the AUTHORITY or the City by any person or entity for or arising out of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises or Airport Property to which CONCESSIONAIRE has access during any Term of this Agreement of any substance (hazardous or otherwise) regulated by any applicable statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning, any Hazardous Material(s) (including, without limitation, any losses, liabilities, reasonable attorneys’ fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, State or local so-called

“Superfund” or “Super lien” laws), if such presence, escape, seepage, leakage, spillage, discharge, or emission was caused by the CONCESSIONAIRE, its Sublessees, or persons within the control of the CONCESSIONAIRE, its officers, employees, agents, contractors, invitees and/or licensees, or if such substance (hazardous or otherwise) was owned by, or located on the Premises or Airport Property to which CONCESSIONAIRE has access (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release).

17.02 - CONCESSIONAIRE’S Receipt of Notices

If, during the Term of this Agreement, the CONCESSIONAIRE receives any notice of (i) the happening of any event involving the use (other than in the ordinary course of business and in compliance with all applicable laws), spill, release, leak, seepage, discharge or cleanup of any substance (hazardous or otherwise) on the Premises or Airport Property to which CONCESSIONAIRE has access or in connection with the CONCESSIONAIRE’s operations thereon or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental, health, or safety matter affecting the CONCESSIONAIRE from any persons or entity (including, without limitation, the United States Environmental Protection Agency (the “EPA”) or the Kansas Department of Health and Environment (“KDHE”), the CONCESSIONAIRE shall immediately notify the AUTHORITY in writing and provide AUTHORITY copy of said notice.

17.03 - AUTHORITY’S Rights

The AUTHORITY shall have the right, but not the obligation, and without limitation of the AUTHORITY’s other rights under this Agreement, to enter the Premises or to take such other actions as deemed necessary or advisable to inspect, clean up, remove, resolve or minimize the impact of, or to otherwise deal with, any substance (hazardous or otherwise) or environmental complaint following receipt of any notice from any person, including, without limitation, the EPA or KDHE, asserting the existence of any substance (hazardous or otherwise) or an environmental complaint pertaining to the Premises or any part thereof which, if true, could result in an order, suit or other action against the CONCESSIONAIRE and/or which, in the reasonable judgment of the AUTHORITY, could jeopardize its interests under this Agreement. If such conditions are caused by circumstances within the control of the CONCESSIONAIRE or if such circumstances result from a substance (hazardous or otherwise) owned by, or located on the Premises or Airport Property to which CONCESSIONAIRE has access, (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release) all reasonable costs and expenses incurred by the AUTHORITY plus a twenty percent (20%) administrative fee in the exercise of any such rights shall be payable by the CONCESSIONAIRE, within 15 days of written demand by AUTHORITY.

17.04 - Environmental Audit and Risk Assessment

If an event of default shall have occurred and be continuing, the CONCESSIONAIRE at the request of the AUTHORITY shall periodically perform, at the CONCESSIONAIRE's expense, an environmental audit and, if reasonably deemed necessary by the AUTHORITY, an environmental risk assessment, of the Premises, or the hazardous waste management practices and/or hazardous waste disposal sites used by the CONCESSIONAIRE with respect to the Premises. Such audits and/or risk assessments shall be conducted by an environmental consultant satisfactory to the AUTHORITY, and all environmental audits and environmental risk assessments must be reasonably satisfactory to the AUTHORITY. Should the CONCESSIONAIRE fail to perform any such environmental audit or risk assessment within 90 days of the written request of the AUTHORITY, the AUTHORITY shall have the right, but not the obligation, to retain an environmental consultant to perform any such environmental audit or risk assessment. All costs and expenses incurred by the AUTHORITY in the exercise of such rights, plus a twenty percent (20%) administrative fee, shall be payable by the CONCESSIONAIRE, within 15 days of written demand by AUTHORITY.

17.05 - Restrictions

Neither CONCESSIONAIRE nor AUTHORITY shall install or permit to be installed in the Premises friable asbestos, lead-based paint, electrical equipment containing polychlorinated biphenyls (PCBs), or any substance containing asbestos and deemed hazardous by federal or State regulations applicable to the Premises and respecting such material. The CONCESSIONAIRE shall defend, indemnify, and save the AUTHORITY and the City of Wichita harmless from all costs and expenses (including consequential damages) asserted or proven against the CONCESSIONAIRE by any person, as a result of the presence of said substances, and the costs of any removal or compliance with such regulations, if said substance was installed by the CONCESSIONAIRE, or persons within its control.

17.06 - AUTHORITY'S Indemnification

Subject to any limitations or restrictions imposed by the Kansas Budget Law or Cash Basis Law, the AUTHORITY hereby agrees to indemnify and hold harmless the CONCESSIONAIRE from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the CONCESSIONAIRE by any person or entity for, arising out of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during the Term of this Agreement and the period prior to the Term of this Agreement of any substance (hazardous or otherwise) (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, State or local so-called "Superfund" or "Super lien" laws, or any other applicable statute, law, ordinance, code, rule, regulation, order of decree regulating, relating to or imposing liability,

including strict liability, or standards of conduct concerning any Hazardous Material(s)) unless such presence, escape, seepage, leakage, spillage, discharge, emission or release was caused by the CONCESSIONAIRE, or persons within the control of the CONCESSIONAIRE, its officers, employees, agents, invitees and/or licensees, or if such substance (hazardous or otherwise) was owned by, or placed upon the Premises or Airport Property to which CONCESSIONAIRE has access by the CONCESSIONAIRE (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release except to the extent such was caused by the AUTHORITY).

17.07 - Compliance

Environmental compliance shall not be limited to those items noted within this Agreement but shall include any current or future federal, State, or local law, statute or regulation, that may be required of CONCESSIONAIRE's operation (storage or use of substances (hazardous or otherwise), activities of CONCESSIONAIRE's or its Sublessees' employees or contracted vendors etc.). CONCESSIONAIRE shall provide AUTHORITY upon request copies of any plan, training program, training records, material safety data sheet or any other documentation required by said laws.

17.08 - Wastes

Wastes not legally permitted and authorized for disposal into the storm and/or sanitary drainage system shall not be discharged, connected or introduced into storm and/or sanitary drains and the storm and/or sanitary drainage system. CONCESSIONAIRE shall take all reasonable precautions to prevent the discharge of material into any drainage system that would create interference with the flow therein, or that would cause a hazard or unlawful contamination thereto. In compliance with current KDHE storm water regulations, or as such regulations may be amended in the future, CONCESSIONAIRE is required to evaluate its operation within its Premises and determine if compliance is required with stormwater regulations (National Pollutant Discharge Elimination System (NPDES) Stormwater Runoff from Industrial Activity General Permit) or written authorization of a "No Exposure Certification" issued by the KDHE. A copy of the CONCESSIONAIRE's NPDES Notice of Intent or "No Exposure Certification" issued by the KDHE shall be provided to the AUTHORITY within thirty (30) days of CONCESSIONAIRE's occupation of the Premises.

17.09 - Survival of Provisions

The provisions of this Section shall survive the termination of this Agreement.

18. SURRENDER OF POSSESSION AND RESTORATION

CONCESSIONAIRE shall yield and deliver to AUTHORITY possession of the Premises at the expiration or termination of this Agreement in good condition in accordance with CONCESSIONAIRE's obligations in this Agreement, except for reasonable wear and tear, or fire or other casualty for which full insurance compensation has been paid as agreed. CONCESSIONAIRE shall, at its expense, deliver the Premises in good order and condition, including: (1) cleaning and hauling away all supplies and trash; (2) removing by legal means all materials and substances classified as hazardous; (3) leaving in operating condition all bulbs and ballasts; (4) replacing all broken glass, (5) returning to AUTHORITY all keys and security ID badges to all doors and gates, and (6) repairing or replacing any AUTHORITY owned facilities and property which may be damaged by CONCESSIONAIRE beyond reasonable wear and tear resulting from the yielding and delivering of the Premises.

The removal of Personal Property, shall be effected and all damage caused to said Premises by such removal shall be repaired or replaced by CONCESSIONAIRE within thirty (30) days after the termination or expiration of the Agreement. Should the CONCESSIONAIRE fail to remove said Personal Property within the prescribed thirty (30) day period, title to all such Personal Property shall vest in the AUTHORITY which may retain such Personal Property for its own use. In the alternative, the AUTHORITY may cause the removal of all or any portion of such Personal Property at the sole risk and expense of the CONCESSIONAIRE.

19. PERSONAL PROPERTY

For purposes of this Agreement, Personal Property shall mean any property, trade fixtures, furnishings and equipment which are placed upon or within the Premises in such a manner that are not permanently affixed and can be readily removed without damage to the Premises and without substantially changing the character of the facilities and Improvements thereon, and that are the removable property that CONCESSIONAIRE places upon or within the Premises for use in the operation of a Food and Beverage Concession. All property, including point-of-sale equipment, moveable furnishings, signs, tables, chairs, appliances, safes, display racks, and any other non-affixed property, shall be deemed to be the Personal Property of the CONCESSIONAIRE.

Any Personal Property of CONCESSIONAIRE or others placed in or upon the Premises shall be at the sole risk of the CONCESSIONAIRE, and AUTHORITY shall not be responsible or liable for any loss, damage and replacement thereto, regardless of the cause of such loss or damage, and the CONCESSIONAIRE waives all rights of subrogation against recovery from the AUTHORITY for such loss or damage.

The parties agrees that all Personal Property owned and placed upon or within the Premises by the CONCESSIONAIRE shall be removed by the CONCESSIONAIRE in accordance with Section 18 of this Agreement at the termination or expiration of this Agreement subject to any valid lien which AUTHORITY may have on that Personal Property for unpaid rents, expenses or fees; provided the CONCESSIONAIRE shall not then be in default in performance of the covenants hereof.

20. TAXES

CONCESSIONAIRE agrees to pay all present and future taxes or, in lieu of taxes, special assessments now or hereafter levied, assessed, or passed-through: (1) upon the Premises and facilities; (2) upon Personal Property owned or possessed by CONCESSIONAIRE and situated upon or within the Premises; and (3) upon CONCESSIONAIRE'S interest in or use of the Premises. CONCESSIONAIRE shall defend, indemnify and save AUTHORITY and the City harmless from any claims or liens in connection with such taxes, obligations in lieu of taxes or assessments.

CONCESSIONAIRE shall promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operation of the Premises. CONCESSIONAIRE may elect, however, at its own cost and expense, to contest any such tax, excise, levy, or assessment. CONCESSIONAIRE shall keep current all federal, State and local licenses, operating certificates and permits required for the conduct of its operations. CONCESSIONAIRE represents and warrants to AUTHORITY that it has obtained all license, franchise, operating certificates or other agreements or permits necessary to operate CONCESSIONAIRE's operation in accordance with the terms of this Agreement, and CONCESSIONAIRE covenants to keep all such licenses, franchises, permits, operating certificates and other agreements in full force and effect during the Term of this Agreement.

CONCESSIONAIRE shall pay all lawful taxes and assessments which, during the Term hereof, may become a lien upon or which may be levied by the State, County, City or any other tax levying body, upon the Premises or upon any taxable interest of CONCESSIONAIRE acquired in this Agreement, or any taxable possessory right which CONCESSIONAIRE may have in or to the Premises, including any Improvements or facilities located on the Premises. CONCESSIONAIRE shall also pay all lawful taxes and assessments on taxable property, real or personal, owned by CONCESSIONAIRE in and about said Premises. Nothing in this Section shall prevent CONCESSIONAIRE from contesting the legality, validity or application of any such tax or assessment to the full extent CONCESSIONAIRE may be lawfully entitled so to do.

21. MISCELLANEOUS COVENANTS

CONCESSIONAIRE shall observe and comply with any and all present and future requirements of the constituted public authorities and with all Federal, State, or local statutes, ordinances, regulations and standard rules applicable to CONCESSIONAIRE or its use of the Premises, including by way of example but not of limitation, all general rules and regulations promulgated from time to time by the Director in connection with the administration of the Airport.

CONCESSIONAIRE shall bear all operating expenses, including but not limited to: employees' salaries, taxes, licenses and fees required by governmental agencies.

CONCESSIONAIRE hereby agrees to make no claims or file or cause to be filed any legal or equitable actions against AUTHORITY or the City for any kind of damages which result from the operation of the Airport, including noise or sound shock waves due to aircraft use of said Airport's facilities.

22. INDEMNITY AND INSURANCE BY CONCESSIONAIRE

22.01 - Indemnity

CONCESSIONAIRE hereby agrees to release, to defend, to indemnify and to save harmless the AUTHORITY and the City of Wichita, Kansas, and their officers, agents and employees, (i) from and against any and all loss of or damage to property, or injuries to or death of any person or persons, as well as (ii) from and against any and all claims, damages, suits, costs, expense, liability, actions or proceedings of any kind or nature whatsoever (including, without limiting the generality of the foregoing, Workers Compensation and any assessments resulting from civil penalties or regulatory), of or by anyone whomever in matters resulting from or arising out of, or alleged to have resulted from or to have arisen out of, directly or indirectly, CONCESSIONAIRE'S operations or activities under or in connection with this Agreement, or CONCESSIONAIRE'S use and occupancy of any portion of the Airport, and including, without limiting the generality of the foregoing, acts and omissions of CONCESSIONAIRE'S officers, employees, representatives, Sublessees, suppliers, customers, contractors or agents. Provided, however, CONCESSIONAIRE shall not be liable for any loss occasioned by the sole negligence or misconduct of the AUTHORITY, The City of Wichita, Kansas or their officers, agents, and employees. AUTHORITY covenants to give CONCESSIONAIRE prompt notice of any claims. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement.

In the event, however, the certificate of insurance provided by CONCESSIONAIRE is void of any mention of coverage for its obligations to indemnify, CONCESSIONAIRE irrefutably

covenants and agrees that CONCESSIONAIRE has the maximum allowed insurance for its obligations to indemnify and AUTHORITY may rely on said covenant. The coverage for indemnification given by CONCESSIONAIRE under this Agreement shall not in any way limit CONCESSIONAIRE'S indemnification obligations hereunder. The minimum insurance requirements set forth below shall not be deemed to limit the obligations of CONCESSIONAIRE hereunder.

Should CONCESSIONAIRE, its employees, Sublessees, subcontractors, suppliers, agents, customers, and/or representatives cause any violations of federal, State or local law, regulation or ordinance, and should AUTHORITY be cited for a fine or penalty for such violation, CONCESSIONAIRE agrees to reimburse AUTHORITY for any monetary fine or penalty which may be imposed on AUTHORITY. However, nothing herein shall prevent the CONCESSIONAIRE from contesting the legality, validity or application of such fine or penalty to the full extent CONCESSIONAIRE may lawfully be entitled, nor require AUTHORITY to pursue such a contest on CONCESSIONAIRE's behalf.

22.02 - Liability Insurance

CONCESSIONAIRE shall procure, maintain and carry, at its sole cost, in accordance with and/or until completion of this Agreement all insurance, as required per the amounts as set forth below. Insurance shall be furnished by a company licensed to do business in the State of Kansas.

Insurance certificates shall be issued on a standard ACORD form or such other documentation as may be acceptable to AUTHORITY in its discretion and include the NAIC number of the insuring company. Each insurance company's rating, as shown in the latest Best's Key Rating Guide, shall be no less than A-VII, unless otherwise approved by the AUTHORITY, or from a Workers' Compensation pool approved by the State of Kansas. Insurance certificates must be received and approved by the AUTHORITY prior to occupancy but failure to provide approved certificates shall not delay Opening Day for purposes of Concession Fees or rent accrual. AUTHORITY retains the right to require changes in the character, coverages and amounts of coverage commensurate with changes in the CONCESSIONAIRE'S use of the Premises.

The failure of AUTHORITY to reject the CONCESSIONAIRE'S proffered insurance shall not be deemed to constitute an acceptance by the AUTHORITY of deficient insurance coverage. If the CONCESSIONAIRE fails to procure or maintain any of the specified coverages the AUTHORITY has the right, but not the obligation, to secure the coverage and charge the cost to the CONCESSIONAIRE along with a 20% administrative fee.

The CONCESSIONAIRE shall be responsible for determining the types and limits of insurance coverage required by any approved Sublessee. At a minimum, such Sublessee shall carry

Workers' Compensation, general liability (minimum of \$1,000,000 per occurrence) and automobile liability (minimum of \$500,000 combined single limit). CONCESSIONAIRE shall require in any approved sublease that the Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds on the Sublessee's general liability policy.

The requirements, procurement and carrying of the required insurance shall not limit any of the CONCESSIONAIRE's obligations or liability under this Agreement or as a matter of law.

Where "minimum limits" of insurance are specified in this Section, such minimum insurance limits are required and considered by AUTHORITY to be the lowest insured amounts acceptable under this Agreement. The CONCESSIONAIRE is not limited or restricted whatsoever in securing additional insurance coverage and higher insured limits than those specified herein if, at the CONCESSIONAIRE's determination and discretion and commensurate with the type of activity and associated business and operational risk, additional coverage and higher limits are necessary and appropriate.

Insurance shall include the following terms, conditions and minimum limits:

a) WORKERS' COMPENSATION

CONCESSIONAIRE shall maintain Workers' Compensation insurance to cover the statutory requirements of the Workers' Compensation laws of the State of Kansas for its operations on the Premises and elsewhere at the Airport, and when applicable, to Federal Laws and Voluntary Compensation and Employer's Liability (including occupational disease) coverage.

b) AUTOMOBILE LIABILITY

CONCESSIONAIRE shall maintain automobile insurance, which shall include all owned, non-owned and hired automobiles used at the Airport, and shall have minimum bodily injury and property damage limits as outlined herein.

Each Occurrence

\$1,000,000 Combined Single Limit for bodily injury and property damage for all vehicles owned or operated by CONCESSIONAIRE.

If CONCESSIONAIRE brings its vehicle(s) inside the Security Identification Display Area (SIDA), then it shall provide coverage in the amount of \$4,000,000.

c) COMMERCIAL GENERAL LIABILITY

CONCESSIONAIRE shall maintain Commercial General Liability Insurance on an occurrence form. Minimum limits, as outlined herein, shall be:

Each Occurrence	\$1,000,000 Combined Single Limit for bodily injury and property damage. Coverage thereunder shall include contractual liability, personal injury, owners' and contractors' protection, fire legal, products/completed operations, liquor liability, and broad form property damage coverage.
-----------------	--

The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds. The policy shall also provide coverage for CONCESSIONAIRE's contractual obligations created in this Agreement.

d) UMBRELLA/EXCESS LIABILITY COVERAGE

The CONCESSIONAIRE shall provide minimum Umbrella/Excess liability limits (excess of all coverages other than Workers' Compensation) of:

Each Occurrence Limit	\$1,000,000
Annual Aggregate Limit	\$1,000,000

The Wichita Airport Authority and the City of Wichita shall be added as primary and non-contributory additional insureds covered under this umbrella/excess liability coverage.

CONCESSIONAIRE agrees that in the event of future changes in the law or upon notice by the AUTHORITY, the minimum levels of insurance required by this Section may be increased within the bounds of commercial reasonableness.

CONCESSIONAIRE agrees, prior to the commencement of this Agreement, to provide AUTHORITY with copies of certificates, and if requested, of all policies evidencing that such insurance is in full force and effect, and stating the terms thereof. This Agreement shall not commence until policies of insurance satisfactory to AUTHORITY are supplied by CONCESSIONAIRE. CONCESSIONAIRE shall provide AUTHORITY updated certificates of insurance the earlier of annually, or upon renewal, which certificate shall demonstrate the

coverage required in this Section for the ensuing twelve (12) month period. Failure to maintain satisfactory insurance policies in force shall constitute grounds for cancellation of this Agreement as set forth in Section 24, Termination By AUTHORITY In Event Of Default.

CONCESSIONAIRE shall be solely responsible for obtaining insurance policies that provide coverage for losses of CONCESSIONAIRE-owned property. Authority shall not be required to provide such insurance coverage or be responsible for payment of CONCESSIONAIRE's cost for such insurance.

22.03 - Subrogation of Insurance

AUTHORITY hereby waives any and all rights of recovery against CONCESSIONAIRE for or arising out of damage or destruction of the Terminal, or the demised Premises, or any other property of AUTHORITY, from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of such policies, whether or not such damage or destruction shall have been caused by the negligence of CONCESSIONAIRE, its Sublessees, agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver without diminution of AUTHORITY coverage.

CONCESSIONAIRE hereby waives any and all rights of recovery against AUTHORITY for or arising out of damage to or destruction of any property of CONCESSIONAIRE from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of AUTHORITY, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.

22.04 - Loss of Personal Property

Any personal property of CONCESSIONAIRE or third parties placed in or upon the Premises shall be at the sole risk of the CONCESSIONAIRE, and AUTHORITY shall not be responsible or liable for any loss, damage and replacement thereto, regardless of the cause of such loss or damage, and the CONCESSIONAIRE waives all rights of subrogation against recovery from the AUTHORITY for such loss or damage unless such loss or damage is the result of the AUTHORITY's negligence.

23. INDEPENDENCE OF AGREEMENT

It is understood and agreed that nothing herein is intended or should be construed in any way as creating or establishing the relationship of co-partners between the parties hereto or of creating a joint venture or as establishing CONCESSIONAIRE as the agent, representative, or employee of the Authority for any purpose or in any manner whatsoever.

24. TERMINATION BY AUTHORITY IN EVENT OF DEFAULT

24.01 AUTHORITY'S Termination Rights

- a) In the event that CONCESSIONAIRE shall fail to perform, keep and observe any of the terms, covenants or conditions made an obligation of the CONCESSIONAIRE in this Agreement, AUTHORITY may give written notice to CONCESSIONAIRE to correct such condition or default; and, if CONCESSIONAIRE shall not correct such condition or default within thirty (30) days after such notice, AUTHORITY may terminate this Agreement by giving ten (10) Days notice and the Term hereby demised shall thereupon cease and expire at the end of such ten (10) Days in the same manner and effect as if it were the expiration of the Term. No default on the part of the CONCESSIONAIRE shall be deemed to continue so long as CONCESSIONAIRE shall have promptly taken action to correct the same and shall be diligently prosecuting such action. In any case where AUTHORITY shall be entitled hereunder to terminate this Agreement, AUTHORITY may, as an alternative to termination of the Agreement, perform the obligation imposed under this Agreement for the account of and at the expense of the CONCESSIONAIRE and the same shall be paid by CONCESSIONAIRE as additional rent within thirty (30) Days following the date of receipt by CONCESSIONAIRE of an invoice for the expense.
- b) AUTHORITY may terminate this Agreement and all of its obligations hereunder by giving CONCESSIONAIRE ten (10) Days written notice upon or after filing by CONCESSIONAIRE of a voluntary petition in bankruptcy.
- c) AUTHORITY may terminate this Agreement and all of its obligations hereunder by giving CONCESSIONAIRE sixty (60) Days written notice upon or after failure of CONCESSIONAIRE to vacate or set aside the following:
 - (1) If involuntary proceedings in bankruptcy be instituted against the CONCESSIONAIRE; or
 - (2) If a court shall take jurisdiction of CONCESSIONAIRE pursuant to proceedings brought under the provisions of any Federal Reorganization Act; or
 - (3) If receiver of CONCESSIONAIRE'S assets be appointed.

- d) AUTHORITY may terminate this Agreement and all of its obligations hereunder by giving CONCESSIONAIRE written notice upon the happening of either or both the following events:
- (1) If CONCESSIONAIRE shall voluntarily abandon and discontinue the conduct and operation of its service on Airport Property for a continuous period of thirty (30) Days;
 - (2) If CONCESSIONAIRE shall abandon any of the Premises for a continuous period of thirty (30) Days at any one time, except when such abandonment be caused by fire, earthquake, war, strike or other calamity beyond CONCESSIONAIRE'S control.
- e) AUTHORITY may terminate this Agreement and all of its obligations hereunder by giving CONCESSIONAIRE ten (10) Days written notice upon or after failure to comply with terms and conditions of Section 26 hereof.

24.02 - No Waiver

No waiver of default by AUTHORITY of any of the terms, covenants, or conditions hereof to be performed, kept or observed by CONCESSIONAIRE shall be construed to be or act as a waiver of any subsequent default of the terms, covenants, and conditions herein contained to be performed, kept and observed by CONCESSIONAIRE. The acceptance of rental and/or compensation by AUTHORITY for any period or periods after default of any of the terms, conditions, or covenants herein contained to be performed, kept and observed by CONCESSIONAIRE shall not be deemed a waiver of any right on the part of the AUTHORITY to cancel this Agreement for failure by CONCESSIONAIRE to perform, keep, or observe any of the terms, covenants, or conditions of this Agreement.

25. TERMINATION BY CONCESSIONAIRE IN THE EVENT OF DEFAULT

The CONCESSIONAIRE, in addition to any other rights to which it may be entitled by law or otherwise, may cancel this Agreement by giving AUTHORITY written notice in the event of default by AUTHORITY under this Agreement continuing for more than sixty (60) days after the AUTHORITY's receipt of written notice of such event of default and opportunity to cure from the CONCESSIONAIRE, upon or after the happening of any one of the following events:

- a) Issuance by any court of competent jurisdiction of a permanent injunction in any way preventing or restraining the use of the Premises or any major part thereof for Premises purposes and the remaining in full force of such permanent injunction for a period of at least one hundred eighty (180) Days.
- b) Inability of the CONCESSIONAIRE to use, for a period in excess of one hundred eighty (180) Days, the Premises or any part of the Premises because of any law, order, rule, regulation or other action or non-action of the Federal Aviation Administration or any other governmental authority, or because of fire, earthquake, other casualties or acts of God or the public enemy.
- c) AUTHORITY shall fail to perform, keep and observe any of the obligations, terms, warranties or conditions contained in this Agreement that on the part of AUTHORITY are to be performed, kept or observed:
 - 1) CONCESSIONAIRE may give AUTHORITY written notice to correct such condition or cure such default, and if any such condition or default shall continue for sixty (60) Days after receipt of such notice by AUTHORITY, CONCESSIONAIRE may terminate this Agreement and the Term hereof shall cease and expire at the end of such sixty (60) Days in the same manner and to the same effect as if it were the expiration of the Initial Term, unless such condition or default cannot reasonably be corrected within the 60-day period and AUTHORITY has demonstrated due diligence with respect to curing said default, then such cure period may be extended for consecutive periods of 30 days, as long as diligent progress is made toward cure, with a reasonably foreseeable resolution date. Under such circumstances, default may be treated as cured until cured. Should diligent progress cease, or the reason for default become apparent as insoluble, then the Term shall cease and expire at the end of the 30-Day extension then in effect;
- d) Assumption by the United States Government or any other authorized agency thereof of the operation, control or use of the Airport and the facility herein described, or of any substantial part or parts thereof in such a manner as to substantially restrict the CONCESSIONAIRE for a period of one hundred eighty (180) days from operating on and within the facility.
- e) In the event of destruction of the facilities, Improvements, or the demised Premises as more fully described in Section 42, Damage Or Destruction.

26. WAIVER OF STATUTORY NOTICE

In the event AUTHORITY exercises its option to terminate this Agreement upon the happenings of any or all of the events set forth in Section 24, "Termination by AUTHORITY in Event of Default," any notice of termination given pursuant to the provisions of said Section 24 shall be sufficient to cancel and terminate this Agreement; and, upon such termination, CONCESSIONAIRE hereby agrees that it shall forthwith surrender possession of the demised Premises to the AUTHORITY. In this connection, CONCESSIONAIRE hereby expressly waives the receipt of any notice to quit or notice of termination which would otherwise be given by AUTHORITY under any provisions of the laws of the State of Kansas, including, but not limited to, notices required to be given under any section of the Kansas Statutes.

27. TRANSFER OF OWNERSHIP

As of the Commencement Date of this Agreement and thereafter throughout the Interim Term and the Initial Term, a transfer of ownership of a majority or more of the CONCESSIONAIRE without the prior written approval of AUTHORITY, which shall not be unreasonably withheld, shall constitute a material breach of this Agreement for which AUTHORITY may terminate the same under the provisions of Section 24 hereof. Moreover, at least ninety (90) Days prior to any contemplated ownership transfer, CONCESSIONAIRE shall submit a written request to AUTHORITY showing good and sufficient financial worth and adequate experience in the operation of food and beverage concessions on the part of the contemplated purchaser or purchasers and evidencing the intent of such contemplated purchaser or purchasers to expressly assume in writing and agree to be bound by and fulfill all of the terms, covenants, obligations and agreements contained in this Agreement.

28. ASSIGNMENT AND SUBLETTING

This Agreement is entered into by CONCESSIONAIRE through the competitive public solicitation which includes essential and exacting specifications, and insofar as this Agreement is a service agreement that relies upon the past performance, personal integrity, trust, financial worth and unique expertise of the CONCESSIONAIRE to operate a sound Food and Beverage Concession that provides service to the public, and insofar as this Agreement provides for the AUTHORITY to extend financial accommodation for the benefit of the CONCESSIONAIRE, the CONCESSIONAIRE shall not, without the prior written consent of AUTHORITY, assign or sublet any portion of the Premises; provided that if an assignment or sublease is approved by AUTHORITY, the term of any such assignment or sublease shall not extend beyond the Term of

this Agreement. In the event of any conflicts between the terms and conditions of this Agreement and those of a sublease or assignment, the terms and conditions of this Agreement shall control.

Except as specifically provided above, CONCESSIONAIRE shall not assign this Agreement or any interest therein by an operation of law, process or proceeding of any Court or otherwise, or sublet the Premises or any portion thereof and/or the operation or maintenance of the Premises without first obtaining the prior written approval of the AUTHORITY; moreover, at least ninety (90) Days prior to any contemplated assignment of this Agreement by any operation of law, process or proceeding of any Court or otherwise, CONCESSIONAIRE shall submit a written request to the AUTHORITY, and CONCESSIONAIRE shall submit evidence showing good and sufficient financial worth and adequate experience in the operation of food and beverage facilities on the part of the contemplated assignee. In any event, no assignment shall be made or shall be effective unless CONCESSIONAIRE shall not be in default on any of the terms, provisions, covenants and conditions herein contained. Further, in no event shall any assignment be effective, regardless of any submissions to the AUTHORITY, without the prior written approval of the AUTHORITY. The party to whom such assignment is made shall expressly assume in writing and agree to be bound by and fulfill all of the terms, covenants, obligations and agreements contained in this Agreement.

In the event of any approved assignment, CONCESSIONAIRE shall remain liable to AUTHORITY to pay to AUTHORITY any portion of the Concession Fees and other payments provided for herein upon failure of the assignee to pay the same when due; moreover, no subleasing shall release the CONCESSIONAIRE from its obligations to pay all Concession Fees and other amounts due hereunder or release CONCESSIONAIRE from any of the terms, covenants or conditions herein contained on the part of the CONCESSIONAIRE to be performed, kept and observed. Further, in the event of an approved assignment or subleasing, neither assignee nor its Sublessee shall assign or sublet any portion of the Premises except with the prior approval of AUTHORITY and CONCESSIONAIRE herein, and any sublease or assignment by CONCESSIONAIRE shall contain a clause to this effect.

In the event of an approved assignment, the assignee shall provide the AUTHORITY with a letter of credit or performance bond pursuant to the requirements of the Agreement. Upon receipt of such required acceptable letter of credit or performance bond by the AUTHORITY, the AUTHORITY may thereupon return the assignor's letter of credit or permit performance bond cancellation. Provided, however, in the event of default by the assignee, wherein the Agreement reverts back to the assignor, in accordance with the above referenced paragraph of

this Section, then and in that event the assignor shall provide the AUTHORITY with a required, acceptable letter of credit or performance bond.

CONCESSIONAIRE will not sublease, rent or permit any persons, firms or corporations to occupy any part of the Premises, or to provide any type of commercial operation, aviation or otherwise, on the Premises without having first received the prior written consent of AUTHORITY, such consent not to be unreasonably withheld or unduly delayed and granted only under the following conditions:

- a) Any arrangements must be in the form of a written instrument and must be for purposes and uses of the Premises as authorized under this Agreement, and shall be subject to the provisions of this Agreement. CONCESSIONAIRE shall submit a copy of such proposed instrument at the time of requesting consent of AUTHORITY.
- b) All subleases must comply with this Agreement, and will be reviewed for compliance by AUTHORITY to that end. Any arrangement for the subleasing of space must be in conformance with the use of the Premises outlined in this Agreement, unless expressly approved otherwise in writing by AUTHORITY.
- c) CONCESSIONAIRE must keep current records on file and available for AUTHORITY's inspection that describe the nature and document the legitimacy of the Sublessee's business, including all current municipal, State, or local licenses or permits required for the conduct of Sublessee's business.
- d) CONCESSIONAIRE hereby agrees that it shall incorporate language acceptable to AUTHORITY into all of its sublease agreements, placing on any Sublessee and that Sublessee's affiliated entities, customers, employees, invitees, contractors, and subcontractors similar restrictions, as may be appropriate to its approved uses as those which bind CONCESSIONAIRE and its use of the Premises through this Agreement. CONCESSIONAIRE shall also incorporate and make reference to this Agreement, as may be amended from time to time, to ensure Sublessee's operations and conduct are subject to and are in compliance with the terms and conditions of this Agreement, as may be amended from time to time. Any sublease agreement shall explicitly state that it is subordinate to this Agreement, and that the Sublessee shall never obtain rights in the Premises greater than those held by CONCESSIONAIRE under this Agreement, as amended. Any Sublessee shall be specifically subject to eviction from the Premises as a result of termination, cancellation, or expiration of

this Agreement, irrespective of Sublessee's state of compliance with the terms of its sublease.

- e) CONCESSIONAIRE shall at all times during the term(s) of approved sublease(s), remain responsible to AUTHORITY for the compliance of its Sublessees with the terms and conditions of any approved sublease and with this Agreement. AUTHORITY may look to CONCESSIONAIRE directly to satisfy any failure of Sublessee to comply with these documents.
- f) Consent to one sublease permit or subcontract shall not be deemed consent to any subsequent sublease permit or subcontract. Prior written consent of the AUTHORITY shall be required for each sublease permit or subcontract executed by the CONCESSIONAIRE.

29. NONDISCRIMINATION

The CONCESSIONAIRE shall comply with all the following nondiscrimination provisions to the extent that CONCESSIONAIRE'S activities shall be subject to the same:

29.01 Nondiscrimination in Employment

The CONCESSIONAIRE agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, ancestry, age or disability. The CONCESSIONAIRE shall take affirmative action to insure that employees are treated without regard to their race, creed, color, national origin, sex, ancestry, age or disability. Such actions shall include, but not be limited to, the following: employment, promotion demotion or transfer, recruitment, advertising, lay-off or termination, and selection for training, including apprenticeship. The CONCESSIONAIRE, and any Sublessee, hereby agrees to post, in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this Section.

29.02 Facilities Nondiscrimination

A. CONCESSIONAIRE shall make its accommodations and/or services available to the public on fair and reasonable terms without unjust discrimination on the basis of sex, age, race, creed, ancestry, color, national origin, or disability, provided, however, nothing herein shall require the

furnishing to the general public of the use of any facilities or accommodations customarily furnished by CONCESSIONAIRE solely to its employees, customers, clients, guests, and invitees; and CONCESSIONAIRE may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar type of price reductions to volume purchasers.

- (1) Noncompliance with any nondiscrimination provision imposed by law related to the accommodations and/or services provided under this Agreement, or noncompliance with any nondiscrimination within this Agreement, shall constitute a material breach of this Agreement and, in the event of such noncompliance, AUTHORITY shall have the right to terminate this Agreement and the estate hereby created without liability therefore, or at the election of AUTHORITY or the United States, either or both said Governments, shall have the right to judicially enforce said provision.
- (2) CONCESSIONAIRE agrees to insert the above in any leases, agreements, or contracts, etc. by which said CONCESSIONAIRE grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Premises.

29.03 - Affirmative Action Program

CONCESSIONAIRE assures that it shall undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person on the grounds of race, creed, color, national origin, ancestry, age, sex, or disability, be excluded from participation in any employment activities covered by 14 CFR Part 152, Subpart E. CONCESSIONAIRE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. CONCESSIONAIRE assures that its covered suborganizations and subcontractors shall give assurances to CONCESSIONAIRE that they similarly shall undertake affirmative action programs and that they shall require assurances from their suborganizations and subcontractors, as required by 14 CFR Part 152, Subpart E, to the same effect.

29.04 - ACDBE Program

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, apply to this concession. It is the policy of the Wichita Airport Authority to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this Agreement. These requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of four and half percent (4.5%) of annual gross receipts has been established for this concession. This goal is subject to FAA approval and may be modified at the direction of the FAA. The CONCESSIONAIRE shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the concession specific goal for

ACDBE participation in the performance of this concession. The CONCESSIONAIRE is placed on notice that during the Term of this Agreement, FAA may require and approve new ACDBE goals for the AUTHORITY. If this occurs, new proof of compliance or good faith efforts shall be required of the CONCESSIONAIRE as a material contract term.

The CONCESSIONAIRE shall be required to submit the following information: (1) the names and addresses, and copies of certifications of ACDBE firms and suppliers that shall participate in the concession, (2) A description of the work that each ACDBE shall perform; (3) The dollar amount of the participation of each ACDBE firm participating; (4) Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime CONCESSIONAIRE's commitment; and (6) If the contract goal is not met, CONCESSIONAIRE shall provide competent, written evidence of good faith efforts, diligently undertaken.

The CONCESSIONAIRE shall be required to replace an ACDBE concessionaire that is unable to perform successfully by another ACDBE concessionaire, if the remaining Term of this Agreement makes this feasible. In the event that such action is not feasible, the CONCESSIONAIRE shall be required to make good faith efforts during the remaining Term of this Agreement to encourage ACDBEs to compete for purchases and/or leases of goods and services to be made by the CONCESSIONAIRE.

30. NON-INTERFERENCE WITH AIRPORT OPERATIONS

CONCESSIONAIRE covenants and agrees that it shall not allow any condition on the Airport, nor permit the conduct of any activity on such premises, which shall materially or adversely affect the development, improvement, operation, or maintenance of the Airport or its facilities, nor shall CONCESSIONAIRE use or permit the Airport to be used in any manner which might interfere with the landing and take-off of aircraft from the Airport or otherwise constitute a hazard to the general public, or to AUTHORITY's tenants or the customers, agents, invitees, contractors, representatives and employees of those tenants.

CONCESSIONAIRE covenants and agrees that it shall not allow any condition on the Airport, nor permit the conduct of any activity on such Airport, which shall materially or adversely affect, infringe upon, block or interrupt the operations or business activity of other airport tenant leaseholds.

31. COOPERATION WITH AIRPORT DEVELOPMENT

CONCESSIONAIRE understands and agrees that AUTHORITY may pursue Airport development, Improvements and maintenance activities from time-to-time that may affect the Premises and other areas of the Airport. CONCESSIONAIRE agrees to work cooperatively and in good faith with the AUTHORITY and other tenants and contractors in development, improvement and maintenance activities to minimize any disruptions. If requested by the AUTHORITY, CONCESSIONAIRE shall cooperate with and assist the AUTHORITY to the greatest extent possible in the development and implementation of any plans, designs, ingress/egress, or transition that may arise in connection with such Airport development, improvement, and maintenance activities. AUTHORITY may temporarily or permanently close, re-route, or consent to the closing or re-routing of any method of ingress or egress on the Airport, so long as the means of ingress and egress are reasonably equivalent to current access available to CONCESSIONAIRE. AUTHORITY may temporarily close the runway, taxiways, ramps or portions thereof for purposes of maintenance, replacement, re-construction or expansion. Provided that exercise by AUTHORITY of any such Airport development, improvement, or maintenance shall be without expense to the CONCESSIONAIRE and shall not unreasonably or materially interfere with CONCESSIONAIRE's use of the Premises, and shall not delay CONCESSIONAIRE in the exercise of its rights or the performance of its duties hereunder or increase the costs of such performance.

32. TITLE TO FACILITIES, IMPROVEMENTS AND FIXTURES

Unless otherwise permitted under Section 19, title/ownership to the Premises, and to all existing structures, fixtures, facilities and Improvements, or future structures, fixtures, facilities and Improvements constructed and permanently affixed to the Premises shall be, and shall remain, exclusively with AUTHORITY. Such structures, fixtures, facilities and Improvements shall include, but may not be limited to permanently affixed shelves, cabinets, counters, light fixtures, conduit, wiring and cabling, pipes and plumbing fixtures, and all other property of every kind and nature which is permanently affixed.

CONCESSIONAIRE shall, without cost to AUTHORITY, furnish and install all non-affixed furniture, movable partitions, decorations, accessories, equipment and tools, and all other Personal Property on the Premises necessary to conduct its business, which shall retain its status as Personal Property even though temporarily placed within or upon the Premises. Title/ownership to non-affixed Personal Property shall remain with CONCESSIONAIRE.

33. LIENS

CONCESSIONAIRE shall take or cause to be taken all steps that are required or permitted by law in order to avoid the imposition of any lien upon the Premises or any Improvements thereon. Should any lien be placed on the Premises or any Improvements thereon, CONCESSIONAIRE shall cause to be removed any and all liens of any nature. This obligation includes, but is not limited to, tax liens and liens arising out of or because of any financing, construction or installation performed by or on behalf of CONCESSIONAIRE or any of its contractors or subcontractors upon CONCESSIONAIRE's Premises or arising out of or because of the performance of any work or labor to it at said Premises or the furnishing of any materials to it for use at said Premises. Should any such lien be made or filed, CONCESSIONAIRE shall bond against or discharge the same within thirty (30) days after actual notice of the same from any source, whether from AUTHORITY or otherwise, and provide written proof of discharge or bonding to AUTHORITY within that time. CONCESSIONAIRE acknowledges that its interest in the Premises is a leasehold, and that notwithstanding its construction of Tenant Improvements on the Premises, such Tenant Improvements accrue to the AUTHORITY and that it has no equity interest in the Premises which can support a mortgage lien. CONCESSIONAIRE shall not mortgage or pledge as collateral its leasehold interest herein without the prior written consent of the AUTHORITY. CONCESSIONAIRE acknowledges that all Improvements to the Premises are for its benefits solely, and are not made at the request of the AUTHORITY or for the benefit of the AUTHORITY, irregardless of AUTHORITY's approval of such Improvements.

AUTHORITY may consent, upon CONCESSIONAIRE's written request, to an assignment of rents to a governmentally regulated and insured commercial lender as partial security for financing of CONCESSIONAIRE's activities on the Premises, which assignment is intended to be a present transfer to such lender of all of CONCESSIONAIRE's rights to collect and receive rents and charges from approved users, operators, sub-concessionaires and permittees. Lender(s) shall have no rights to assign this Agreement or sublease the Premises without the prior written consent of the AUTHORITY as required under Section 28, Assignment And Subletting. Upon CONCESSIONAIRE's written consent, AUTHORITY agrees to give lender(s) notice of any default or cancellation of the Agreement, and allow lender(s) the same opportunity as the CONCESSIONAIRE under the Agreement to correct any condition or cure any default. Nothing in this Section is intended to relieve the CONCESSIONAIRE of its obligations under this Agreement.

34. RULES AND REGULATIONS

CONCESSIONAIRE, its agents and employees, shall be subject to any and all applicable rules, regulations, Airport Standard Operating Procedures, orders and restrictions which are now in force or which may hereafter be adopted by the AUTHORITY or the City, in respect to the operation of the Airport; and shall also be subject to any and all applicable laws, statutes, rules, regulations, or orders of any governmental authority, federal or State, which are now in force or which may hereafter be promulgated, lawfully exercising authority over the Airport or CONCESSIONAIRE 's operations conducted hereunder.

AUTHORITY shall not be liable to CONCESSIONAIRE for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority as in this Section provided, nor shall CONCESSIONAIRE be entitled to terminate this Agreement by reason thereof unless exercise of such authority shall so interfere with CONCESSIONAIRE 's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas, or as set out in Section 25, Termination By CONCESSIONAIRE In The Event Of Default.

AUTHORITY shall whenever possible make reasonable efforts to obtain uniform compliance with its rules and regulations; provided, however, AUTHORITY shall not be liable to CONCESSIONAIRE for any violation or non-observance of such rules and regulations by any other tenant, operator or concessionaire at the Airport.

35. ENCROACHERS, TRESSPASSERS AND OTHER THIRD PARTY HAZARDS

CONCESSIONAIRE shall lawfully remove, or cause to be removed by AUTHORITY or other official law enforcement agency, all encroachers, trespassers and other third parties violating laws of the federal, State or local government, or who are not on the Premises for legitimate purposes.

36. SECURITY SYSTEMS

AUTHORITY may at its sole discretion, install, operate and maintain a security monitoring system in non-exclusive use areas of the interior and exterior facilities. AUTHORITY may at its sole discretion install, operate and maintain a computer controlled access system at certain Exclusive Use or non-Exclusive Use door access points. The purpose of said security systems is for the provision of safety and security to the general public, Airport employees, tenants and permittees and their employees and invitees, primarily within non-exclusive common use areas.

The AUTHORITY shall install, operate and maintain security systems in the interior and exterior of the Terminal. The purpose of these security systems is for the provision of safety and security to the general public, airport employees, tenants, their employees and invitees. CONCESSIONAIRE may not rely on the surveillance cameras and access control systems owned and operated by the AUTHORITY for purposes of risk management or private security from property loss or theft.

CONCESSIONAIRE may, at its sole option, install, operate and maintain private security systems on the Premises, however, any such private security systems installed and operated by the CONCESSIONAIRE shall not block, hinder, interfere, over-ride or obstruct any security system of the AUTHORITY.

37. SECURITY

CONCESSIONAIRE shall comply with all applicable regulations relating to Airport security. AUTHORITY shall be held harmless for any and all breaches of the Federal Aviation Administration or Transportation Security Administration's policies and regulations and AUTHORITY's security rules or regulations caused by the CONCESSIONAIRE, its agents or employees, or that occur on the CONCESSIONAIRE'S Premises except to the extent caused by AUTHORITY. In the event the Federal Aviation Administration or the Transportation Security Administration imposes a fine or penalty for any such security violation, whether such fine or penalty is assessed to the AUTHORITY or the CONCESSIONAIRE or their agents or employees, the penalty shall be paid by the CONCESSIONAIRE, provided, however, that nothing herein shall prevent CONCESSIONAIRE from contesting the legality, validity or application of such fine or penalty to the full extent CONCESSIONAIRE may be lawfully entitled so to do.

38. AIRPORT SECURITY PROGRAM COMPLIANCE

CONCESSIONAIRE must obtain Airport Security Identification and Access Media (I.D. Media) for its employees, subcontractors, Sublessees, suppliers, agents, and representatives requiring access to the sterile areas, secured Air Operations Area (AOA), and Security Identification Display Area (SIDA), or other secured areas as may be identified in the Airport Security Program, and pay any related costs associated with the privileges as set forth under this Section. With respect to the issuance, maintenance, and administration of I.D. Media, the CONCESSIONAIRE shall pay or cause to be paid to the AUTHORITY all charges as may be established from time to time by the AUTHORITY. Such costs may include, but are not limited

to: (i) the initial issuance of I.D. Media; (ii) the replacement of lost or stolen I.D. Media; (iii) administrative costs with respect to those I.D. Media not returned to the AUTHORITY.

Said I.D. Media will be valid as set forth under the Airport Security Program, and must be returned to the Airport Police and Fire Division, at 2193 Air Cargo Road within twenty-four (24) hours after expiration, suspension, and/or termination of this Agreement. Said I.D. Media will be valid for no longer than the period of this Agreement. The CONCESSIONAIRE shall be responsible for requesting the issuance of I.D. Media to employees or other authorized representatives of the CONCESSIONAIRE who require access to secured areas on the Airport due to operational need and necessity. In addition, CONCESSIONAIRE shall be responsible for the immediate reporting of all lost or stolen I.D. Media and the immediate return of the I.D. Media of CONCESSIONAIRE's personnel transferred from the Airport, or separated from the employ of CONCESSIONAIRE.

CONCESSIONAIRE warrants that it will at all times maintain the integrity of the Airport Security Program and comply with all applicable regulations of the Federal Aviation Administration ("FAA") and Transportation Security Administration ("TSA"), 49 CFR Parts 1500, 1542, 1544, 1546, 1548, and 1550 as amended or promulgated, and that it will always maintain the security of the Airport, Premises, and/or any AOA access for which CONCESSIONAIRE is responsible. The AUTHORITY shall have the right to require the CONCESSIONAIRE to conduct background investigations and to furnish certain data on such employees or other persons before the issuance of I.D. Media, which data may include the fingerprinting of any and all of its employees, subcontractors, suppliers, agents, and/or representatives. CONCESSIONAIRE also hereby agrees that it shall be responsible for any and all of the actions on the Premises of its employees, subcontractors, suppliers, agents, customers, invitees, and/or representatives and shall provide any and all necessary escorts, as outlined in the Airport Security Program. CONCESSIONAIRE hereby agrees that it will immediately implement any and all security changes that are directed either directly or indirectly by the TSA, FAA, or AUTHORITY. CONCESSIONAIRE further agrees to correct any security deficiency or other deficiency as may be determined as such by the AUTHORITY, the Department of Transportation ("DOT"), the FAA, or the TSA, or any other federal or state agency with jurisdiction. In the event CONCESSIONAIRE fails to remedy any such deficiency, the AUTHORITY may do so at the sole cost and expense of CONCESSIONAIRE. The AUTHORITY reserves the right to take whatever action is necessary to correct and remedy any security deficiency or other deficiency. When the AUTHORITY takes actions to remedy deficiencies of any kind, it shall be done in a reasonable and cost-conscious manner.

Should CONCESSIONAIRE, its employees, subcontractors, suppliers, agents, customers, invitees, and/or representatives cause any security violations, and should AUTHORITY be cited for a civil fine or penalty for such security violation, CONCESSIONAIRE agrees to reimburse

AUTHORITY for any monetary civil fine or penalty which may be imposed on AUTHORITY. However, nothing herein shall prevent the CONCESSIONAIRE from contesting the legality, validity or application of such fine or penalty to the full extent CONCESSIONAIRE may be lawfully entitled, nor require AUTHORITY to pursue such a contest on CONCESSIONAIRE'S behalf. CONCESSIONAIRE may have I.D. Media/access privileges immediately suspended and/or revoked by AUTHORITY for failure to adhere to the Airport Security Program, or for failure to return all I.D. Media within the time-frames specified herein.

The CONCESSIONAIRE agrees that information concerning the location, type, nature, capabilities, application and use of the AUTHORITY's security system is considered Sensitive Security Information (SSI) as defined by TSR 1520, and shall restrict the distribution, disclosure and availability of SSI only to persons with a need to know. All requests for SSI by persons not directly employed by the CONCESSIONAIRE, and deemed to have a need to know shall be referred to AUTHORITY for consideration and determination of whether such information is legal and appropriate for dissemination.

Before the CONCESSIONAIRE shall permit any employee, subcontractor, Sublessees, supplier, agents, customer, invitee, and/or representative to operate a motor vehicle of any kind or type on the AOA of Mid-Continent Airport (unless such employee is escorted by a AUTHORITY-approved escort), the CONCESSIONAIRE shall ensure that all such vehicle operators have completed required AOA access and driver training, possess a current, valid, and appropriate Kansas driver's license, appropriate Airport issued I.D. Media, and a Vehicle Ramp Permit. CONCESSIONAIRE company vehicles prominently displaying a permanently affixed company name and/or logo on vehicles and equipment are excluded from the requirement of displaying a Vehicle Ramp Permit.

The CONCESSIONAIRE agrees that its vehicles, cargo, product deliveries, and other personal property are subject to being inspected and searched when entering, exiting and while on the AOA.

39. GENERAL PROVISIONS

39.01 - Facility Development

AUTHORITY reserves the right to further develop or improve the landing area or any other area, building or other Improvement within the present or future boundaries of the Airport as it sees fit in its sole judgment regardless of the desires or view of CONCESSIONAIRE and without interference or hindrance by CONCESSIONAIRE. Further, AUTHORITY retains the absolute right to maintain, repair, develop and expand or replace utilities, ramps, taxiways, runways, streets, roadways, sidewalks, any other Airport facility, Airport Improvement or on Airport

Property free from any and all liability to CONCESSIONAIRE for loss of business or damage of any nature whatsoever as may be occasioned during or because of the performance of such maintenance, repair, development, expansion or replacement.

39.02 - Maintenance, Repair, Direction and Control

AUTHORITY reserves the right, but is not obligated to exercise the right, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of CONCESSIONAIRE in this regard. These areas shall include, but are not limited to, those areas which are necessary to serve the aeronautical users of the Airport, except that AUTHORITY shall not be obligated to maintain and keep in repair such areas of the Airport as may be leased to or under the control of Airport tenants, whether such area serves aeronautical users or otherwise.

39.03 - Operation of Airport by the United States of America

This Agreement and all the provisions hereof shall be subject to whatever right the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

39.04 - 14 CFR Part 77 of Federal Aviation Regulations

CONCESSIONAIRE agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building, structure, or attachment thereto is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Airport. CONCESSIONAIRE by accepting this Agreement expressly agrees for itself, its successors and assigns that it shall not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Airport which shall exceed such maximum height as may be stipulated by AUTHORITY. Applicable laws, codes, regulations or agreements concerning height restrictions shall govern the maximum height to be stipulated by AUTHORITY. In the event the aforesaid covenants are breached, AUTHORITY reserves the right to enter upon the Premises and to remove the offending structure or object, and cut down the offending tree, all of which shall be at the expense of CONCESSIONAIRE and without liability to AUTHORITY.

39.05 - Airspace

There is hereby reserved to AUTHORITY, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause or allow in said airspace, any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Airport. No liability on the part of AUTHORITY shall result from the exercise of this right.

39.06 - Easement for Flight

CONCESSIONAIRE releases AUTHORITY from any present or future liability whatsoever and covenants not to sue AUTHORITY for damages or any other relief based directly or indirectly upon noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions occurring as a result of aviation or Airport related operations at or otherwise associated with the Airport. This release and covenant includes but is not limited to claims for damages for physical or emotional injuries, discomfort, inconvenience, property damage, death, interference with use and enjoyment of property, nuisance, or inverse condemnation or for injunctive or other extraordinary or equitable relief. It is further agreed that AUTHORITY shall have no duty to avoid or mitigate such damages by, without limitation, setting aside or condemning buffer lands, rerouting air traffic, erecting sound or other barriers, establishing curfews, noise or other regulations, relocating Airport facilities or operations or taking other measures, except to the extent, if any, that such actions are validly required by government authority. AUTHORITY reserves these rights from the Premises an easement for flight of aircraft in or adjacent to the airspace above the Premises and for the existence and imposition over, on and upon said Premises of noise, light, vibrations, smoke, fumes, odors, air currents, electronic or other emissions, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value which may occur directly or indirectly as a result of aviation, Airport or Airport-related operations at or otherwise associated with use of the Airport. CONCESSIONAIRE accepts the Premises subject to the risks and activities hereinabove described.

39.07 - Airport Hazards

CONCESSIONAIRE by accepting this Agreement agrees for itself, its successors and assignees, that it shall not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. If during the Term of this Agreement the condition is breached, AUTHORITY reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of CONCESSIONAIRE without liability to AUTHORITY of any kind.

39.08 - Airport Rules and Regulations, Policies, and Standard Operating Procedures

AUTHORITY shall have the right to adopt, amend and enforce reasonable Airport rules and regulations, policies and standard operating procedures with respect to use of and the conduct and operation of the Airport, its buildings and facilities or any Improvements within the present or future boundaries of the Airport, which CONCESSIONAIRE agrees to observe and obey.

39.09 - Federal Aviation Administration Requirements

AUTHORITY and CONCESSIONAIRE agree that the requirements of the Federal Aviation Administration ("FAA") set out below are approved by both parties, and if applicable,

CONCESSIONAIRE agrees to comply with all FAA requirements with respect to its operations, use of the Airport and this Agreement:

(a) The CONCESSIONAIRE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the CONCESSIONAIRE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(b) The CONCESSIONAIRE, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any Improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the CONCESSIONAIRE shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(c) The CONCESSIONAIRE assures that it shall undertake an affirmative action program if required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The CONCESSIONAIRE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The CONCESSIONAIRE assures that it shall require that its covered suborganizations provide assurances to the CONCESSIONAIRE that they similarly shall undertake affirmative action programs, and that they shall require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

(d) Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

(e) CONCESSIONAIRE agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, that CONCESSIONAIRE may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

(f) AUTHORITY reserves the right (but shall not be obligated to CONCESSIONAIRE) to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of CONCESSIONAIRE in this regard.

(g) AUTHORITY reserves the right further to develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as it sees fit, regardless of the desires or views of CONCESSIONAIRE, and without interference or hindrance.

(h) AUTHORITY reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent CONCESSIONAIRE from erecting, or permitting to be erected, any building or other structure on the Airport which, in the opinion of AUTHORITY, would limit the usefulness of the Airport or constitute a hazard to aircraft.

(i) During time of war or national emergency AUTHORITY shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

(j) Rights granted by this Agreement shall not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the Airport.

(k) There is hereby reserved to AUTHORITY, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the air space above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on or about the Airport.

(l) This Agreement shall become subordinate to provisions of any existing or future agreement between the AUTHORITY and the United States of America or any agency thereof relative to the operation, development or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

39.10 - Subordination to Agreements with the U.S. Government

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between AUTHORITY and the United States Government relative to the operation or maintenance of Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to AUTHORITY for Airport purposes, or the expenditure of federal funds for the improvement or development of Airport, including the expenditure of federal funds for the development of Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time. AUTHORITY

covenants that it has no existing agreements with the United States Government in conflict with the express provisions hereof.

39.11 - Non-Waiver of Rights

No waiver or default by either party of any of the terms, warranties, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, warranties, covenants or conditions herein contained, to be performed, kept and observed by the other party.

39.12 - Captions

The captions/headings of the Sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

39.13 - Severability and Invalid Provisions

In the event any term, covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such term, covenant, condition or provision shall in no way affect any other term, covenant, condition or provision herein contained; provided, however, that the invalidity of any such term, covenant, condition or provision does not materially prejudice either the AUTHORITY or the CONCESSIONAIRE in their respective rights and obligations contained in the valid terms, covenants, conditions or provisions in this Agreement.

39.14 - Waiver of Claims

CONCESSIONAIRE hereby waives any claim against AUTHORITY and its officers or employees for loss of anticipated profits, consequential or incidental damages, or claim for attorney fees caused by or resulting any suit or proceedings directly or indirectly attacking the validity of Agreement or any part thereof, or the manner in which it is executed or performed, or by any judgment or award in any legal proceeding declaring this Agreement null, void or voidable, or delaying the same of any part thereof, from being carried out. This waiver extends to all claims, whether the supporting legal theory lies in common law or has a statutory basis.

39.15 - Incorporation of Exhibits

All exhibits referred to in this Agreement are intended to be and are hereby specifically made a part of this Agreement.

39.16 - Incorporation of Required Provisions

The parties incorporate in this Agreement by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

39.17 - Non-Liability of Agents and Employees

No member, officer, agent or employee of either party to this Agreement shall be charged personally, or held contractually liable by or to the other party under the terms or provisions of this Agreement, or because of any breach thereof or because of its or their execution or attempted execution.

39.18 - Successors and Assigns Bound

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto where permitted by this Agreement.

39.19 - Time of Essence

Time is of the essence in this Agreement.

39.20 - Relationship of the Parties

It is understood CONCESSIONAIRE is not in any way or for any purpose a partner or joint venturer with or an agent of AUTHORITY. CONCESSIONAIRE shall act as an independent contractor in the performance of its duties pursuant to this Agreement.

39.21 - Interpretation

AUTHORITY and CONCESSIONAIRE hereby agree that this Agreement shall not be construed or interpreted in favor of either party on the basis of preparation.

39.22 - Kansas Laws to Govern

This Agreement and the terms and conditions herein contained shall at all times be governed, interpreted and construed under and in accordance with the laws of the State of Kansas, and the venue for resolution of any issue pertaining to this Agreement shall be in Sedgwick County, Kansas.

39.23 - Force Majeure

Neither the AUTHORITY nor the CONCESSIONAIRE shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage,

acts of terrorism or the results therefrom, or any other circumstances for which it is not responsible or which is not within its control.

40. THIRD PARTY RIGHTS

It is agreed between the parties that it is not intended by any of the provisions of this Agreement to create for the public or any member thereof the status of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

41. QUIET ENJOYMENT

AUTHORITY agrees that, on payment of the rentals and fees and performance of the terms, covenants, conditions and agreements on the part of CONCESSIONAIRE to be performed in this Agreement, CONCESSIONAIRE shall have the right to peaceably occupy and enjoy the Premises, subject however, to the GENERAL PROVISIONS contained in Section 39.

42. DAMAGE OR DESTRUCTION

In the event that facilities or Improvements on the Premises are damaged or destroyed in whole or in part by any peril or casualty during the Term of this Agreement, this Agreement shall remain in full force and effect and CONCESSIONAIRE shall proceed with due diligence to repair, restore, rebuild or replace said damaged or destroyed property or parts thereof to as good a condition as all affected properties were in immediately prior to such damage or destruction, subject to such alterations as CONCESSIONAIRE may elect to make and are permitted in this Agreement. All proceeds from the insurance policies related to such damage or destruction shall be applied to cover the cost of such repairs or restoration. Provided the damage or destruction was not caused in whole or in part by CONCESSIONAIRE'S actions or inactions, from the date of such casualty until such area is so repaired (including if such area is not repaired), the MAG otherwise due hereunder shall abate in amounts proportional to the loss of available Concessions Facilities Space; provided, however, that if an area shall be so slightly injured in any such casualty as not to be rendered unfit for normal usage, the MAG related thereto shall not cease or be abated during any repair period.

In the event the Improvements are damaged or destroyed in whole or in part by any peril or casualty not resulting in whole or in part from the actions of the CONCESSIONAIRE during the Term of this Agreement, and such damage, destruction or loss exceeds fifty five percent (55%) of the value of the property as it existed prior to the casualty loss, CONCESSIONAIRE shall have the election, indicated by written notice given to AUTHORITY within 180 days after the occurrence of such event, not to repair, restore, rebuild or replace the Improvements. Upon such election by CONCESSIONAIRE, this Agreement shall be terminated effective as of the date such notice is given by CONCESSIONAIRE, and neither party shall have any further rights or obligations pursuant to this Agreement other than CONCESSIONAIRE'S obligation to satisfy damages arising from any negligent or intentional action of itself, its employees, agents or invitees to the extent not covered by insurance proceeds. All of the insurance proceeds shall be paid to CONCESSIONAIRE and AUTHORITY as their interests may appear. Where allowed by the insurance policy, insurance proceeds shall first be applied to removal of damaged Improvements from the Premises before such distribution.

43. CONDEMNATION

If, during the Term, title to, or the temporary use of, all or any part of the Premises shall be condemned by any authority exercising the power of eminent domain, CONCESSIONAIRE shall, within fifteen (15) days after the date of entry of a final order in any eminent domain proceedings granting condemnation, notify AUTHORITY in writing as to the nature and extent of such condemnation and whether it is practicable for CONCESSIONAIRE to acquire or construct substitute Improvements.

If CONCESSIONAIRE shall determine that such substitution is practicable and desirable and AUTHORITY shall agree thereto, CONCESSIONAIRE shall forthwith proceed with and complete with reasonable dispatch the acquisition or construction of such substitute Improvements. In such case, any net proceeds received from any award or awards with respect to the Premises or any part thereof made in such condemnation or eminent domain proceeds shall be used and applied for the purpose of paying the cost of such substitution. Any proceeds not required for such costs shall be distributed to the parties in pro-rata distributions as their interests may appear based upon the Term of this Agreement remaining and the fair market value of each party's interest at the time the proceeds are received.

If CONCESSIONAIRE shall determine that it is not practicable and desirable to acquire or construct substitute Improvements, any net proceeds shall be distributed to the parties in pro-rata distributions as their interests may appear based upon the Term of this Agreement remaining, and the fair market value of each party's interest at the time the proceeds are received.

AUTHORITY shall cooperate fully with CONCESSIONAIRE in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Premises or any part thereof. In no event shall CONCESSIONAIRE or AUTHORITY voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Premises without the mutual agreement and written consent of the other party to this Agreement.

44. IMPOSITIONS

CONCESSIONAIRE shall, during the life of this Agreement, bear, pay and discharge, before the delinquency thereof, any and all impositions, including all lawful taxes and assessments imposed on the Premises and Personal Property thereon, or CONCESSIONAIRE's possessory right therein. In the event any impositions may be lawfully paid in installments, CONCESSIONAIRE shall be required to pay only such installments thereof as become due and payable during the life of this Agreement as and when the same become due and payable. AUTHORITY covenants that without CONCESSIONAIRE's written consent it shall not, unless required by law, take any action intended to cause or induce the levying or assessment of any imposition (other than special assessments levied on account of special benefits or other impositions for benefits or services uniformly imposed) which CONCESSIONAIRE would be required to pay under this Section and that should any such levy or assessment be threatened or occur AUTHORITY shall, at CONCESSIONAIRE's request, fully cooperate with CONCESSIONAIRE in all reasonable ways to prevent any such levy or assessment. Nothing herein contained shall prevent CONCESSIONAIRE from contesting the legality, validity, or application of any such tax or assessment to the full extent CONCESSIONAIRE may be lawfully entitled to do so.

45. MODIFICATIONS FOR GRANTING FAA FUNDS

In the event that the AUTHORITY determines the Federal Aviation Administration requirements call for modifications or changes to this Agreement as a condition precedent to granting of funds for the improvement of the Airport, these modifications or changes shall supersede this Agreement and CONCESSIONAIRE agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required by the AUTHORITY to fully comply with federal grant assurances and directives and to obtain Federal Aviation Administration grants-in-aid, provided that no such changes shall materially alter the rights or obligations of CONCESSIONAIRE hereunder.

46. INCORPORATION OF PROPOSAL DOCUMENTS

To the extent that the terms and provisions of the Request for Proposals (“RFP”) to operate a Food and Beverage Concession at the Terminal and of the CONCESSIONAIRE’S Proposal thereof are not in conflict with the provisions of this Agreement, such terms and provisions are made a part hereof as Exhibit F attached hereto by reference, and shall be fully binding on both parties as if fully set out herein. In the event of any conflict between the provisions of this Agreement and those of the RFP and/or CONCESSIONAIRE’S Proposal, said provisions shall be given effect in the following order: (1) this Agreement; (2) the RFP; and (3) the CONCESSIONAIRE’S Proposal in response to the RFP.

47. NOTICES, CONSENTS, AND APPROVALS

Notices or other communications to AUTHORITY pursuant to the provisions hereof shall be sufficient if sent by email delivering coupled with either (i) registered or certified mail, postage prepaid, (ii) by a nationally recognized overnight courier, or (iii) facsimile transmission, addressed to:

Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209;

Fax: (316) 946-4793

and bills, statements, and notices or communications to CONCESSIONAIRE shall be sufficient and irrefutably deemed received if sent by U.S. Postal Service regular mail, postage prepaid, whether or not actually accepted, or if hand-delivered, to:

MSE Branded Foods
225 A Forrest Avenue
Gainesville, GA 30501

Phone (770) 532-3301
Fax (770) 287-0321

and bills and statements to CONCESSIONAIRE shall be sufficient if sent via email to:

memanus@msebranded.com

or to such respective addresses as the parties may designate in writing from time to time.

48. INTENTION OF PARTIES

This Agreement is intended solely for the benefit of AUTHORITY and CONCESSIONAIRE and is not intended to benefit, either directly or indirectly, any third party or member(s) of the public at large. Any work done or inspection of the Premises performed by AUTHORITY is solely for the benefit of AUTHORITY and CONCESSIONAIRE.

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship, between the parties hereto. Further, non-parties to this Agreement shall not maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Agreement. The parties shall understand and agree that neither the method of payment, nor any other provision contained herein, nor any act(s) of the parties hereto creates a relationship other than the relationship of the AUTHORITY and the CONCESSIONAIRE.

49. ENTIRE AGREEMENT

This Agreement supersedes and cancels all previous agreements for the Premises generally described under Section 2, between AUTHORITY and CONCESSIONAIRE or any other party, and all amendments, supplemental agreements, or renewals thereto. The parties understand and agree that this instrument contains the entire Agreement between them. The parties hereto further understand and agree that the other party and its agents have made no representations or promises with respect to the Agreement or the making or entry into this Agreement, except as expressed in this Agreement, and that no claim or liability or cause for termination shall be asserted by either party against the other and such party shall not be liable by reason of the making of any representations or promises not expressly stated in this Agreement, any other written or oral agreement with the other being expressly waived.

The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for which they are acting herein.

The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel deemed necessary for them to form a full and complete understanding of all rights and obligations herein.

50. MODIFICATION

This Agreement shall not be modified or amended unless in writing with formality equal to this Agreement, executed by the CONCESSIONAIRE and AUTHORITY on a date subsequent to the execution of this Agreement.

51. APPROVAL, CONSENT, DIRECTION OR DESIGNATION BY AUTHORITY

Wherever under this Agreement, approvals, consents, directions, or designations are required or permitted, such approvals, consents, directions, or designations required or permitted under this Agreement by AUTHORITY, the same shall be performed by the Director, or his/her authorized representative. Approvals, consents, directions, or designations made at any time by the Director, and from time to time, may be withdrawn or modified by notice from AUTHORITY to CONCESSIONAIRE.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By _____
Karen Sublett, City Clerk

By _____
Carl Brewer, President
"AUTHORITY"

By _____
Victor D. White, Director of Airports

ATTEST:

MSE BRANDED FOOD OF WICHITA, LLC

By _____

By _____
Jack Hough, President
"CONCESSIONAIRE"

APPROVED AS TO FORM: _____ Date: _____
Director of Law

Wichita, Kansas
June 16, 2014
10:00 a.m., Monday
Conference Room, 12th Floor

MINUTES - BOARD OF BIDS AND CONTRACTS*

The Board of Bids and Contracts met with Marty Strayer, Administrative Assistant, Public Works Engineering in the Chair; Elizabeth Goltry-Wadle, Senior Budget Analyst, Budget Office, Clarence Rose, Senior Buyer, representing Purchasing, Zack Daniel, Management Fellow, representing the City Manager's Office, and Janis Edwards, Deputy City Clerk, present.

Minutes of the regular meeting dated June 9, 2014, were read and on motion approved.

Bids were opened May 30, 2014, pursuant to advertisements published on:

Mt. Vernon and Oliver intersection improvements; (Mt. Vernon and Oliver intersection) 87N-0548-01/472-85042 (707037/636302)

Deferred one week

Purchasing Manager recommended that the contracts be deferred as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

On motion the Board recommended that the contracts be deferred as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

On motion the Board of Bids adjourned.

Marty Strayer, Administrative Assistant
Department of Public Works

Janis Edwards, CMC
Deputy City Clerk

FORMAL BID REPORT

TO: Robert Layton, City Manager


DATE: June 16, 2014

ENGINEERING BIDS – GARY JANZEN, CITY ENGINEER

May 30, 2014

Mt. Vernon & Oliver Intersection Improvements – Public Works & Utilities Department/Engineering Division
(Defer to June 23, 2014) (Pending KDOT Approval)

ITEMS TO BE PURCHASED AS ADVERTISED IN THE OFFICIAL CITY NEWSPAPER.


for Melinda A. Walker
Purchasing Manager

PAVING BID TABULATION SUMMARY

BOARD OF BIDS - May 30, 2014

RQ440476

FB440074		Engineer's Construction Estimate	APAC - Kansas Inc	Barkley Construction	Cornejo & Sons, LLC
Mt. Vernon & Oliver Intersection Improvements					\$1,519,711.68
(Mt. Vernon & Oliver Intersection)	BID BOND				X
	ADDENDA	1			X
87N-0548-01/472-85042 (707037/636302)					
		Engineer's Construction Estimate	Dondlinger & Sons	Kansas Paving Company	
Mt. Vernon & Oliver Intersection Improvements				\$1,418,068.85	
(Mt. Vernon & Oliver Intersection)	BID BOND			X	
	ADDENDA	1		X	
87N-0548-01/472-85042 (707037/636302)					
		Engineer's Construction Estimate			
Mt. Vernon & Oliver Intersection Improvements					
(Mt. Vernon & Oliver Intersection)	BID BOND				
	ADDENDA	1			
87N-0548-01/472-85042 (707037/636302)					
		Engineer's Construction Estimate			
Mt. Vernon & Oliver Intersection Improvements					
(Mt. Vernon & Oliver Intersection)	BID BOND				
	ADDENDA	1			
87N-0548-01/472-85042 (707037/636302)					
		Engineer's Construction Estimate			
Mt. Vernon & Oliver Intersection Improvements					
(Mt. Vernon & Oliver Intersection)	BID BOND				
	ADDENDA	1			
87N-0548-01/472-85042 (707037/636302)					
DEFER 1 WEEK PENDING KDOT APPROVAL					

CHECKED BY: tpREVIEWED BY: ps

**PRELIMINARY ESTIMATES
FOR CITY COUNCIL JUNE 17, 2014**

- a. Stormwater Sewer #682 Repair at Headwall at Arkansas River by Stackman Drive & Museum Boulevard (N Stackman Drive & E Museum Boulevard) (468-84963/133117/) Local traffic shall be maintained. (District VI) - \$37,500.00

The following deeds and easements have been recorded:

Utility Easement from Perfection Signature Properties, LLC dated March 25, 2014 for tracts of land lying in portions of Lots 12, 13, and 14, Block 1 AND in portions of Lots 43 and 44, Block 1 AND in portions of Lots 40 and 39, Block 1 AND in Reserve G, Lots 20 and 21, Block 2 AND in Reserve K And in the front 15 feet parallel with and adjoining Siena Court, of Lots 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, Block 2 and that part of Reserve G AND the front 15 feet parallel with and adjoining Verona Street, of Reserve C ALL in Courtyards at Auburn Hills Addition, an Addition to Wichita, Sedgwick County, Kansas (OCA 744358) No Cost to City

Sanitary Sewer Easement from Leewood Homes, Inc., dated February 11, 2014 for a tract of land lying in Lot 10, Block 1, in Glenview, an Addition to Wichita, Sedgwick County, Kansas (OCA 744336) No Cost to City

Sanitary Sewer Easement from Nies Homes, Inc., dated February 11, 2014 for a tract of land lying in Lot 9, Block 1, in Glenview, an Addition to Wichita, Sedgwick County, Kansas (OCA 744336) No Cost to City

The following agreements and easements need to be signed and recorded:

Hold Harmless Agreement by and between the City of Wichita, Kansas and Six Pack, LLC dated March 26th, 2014 for a location in part of Lot 4, Block 1, The Collective, an Addition to Wichita, Sedgwick County, Kansas (OCA 607853) No Cost to City

City of Wichita
City Council Meeting
June 17, 2014

TO: Mayor and City Council

SUBJECT: Community Events – St. Matthew CME Church State Rally (District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closure.

Background: In accordance with the Community Events procedure the event promoter Reverend James Hendricks, St. Matthew CME Church is coordinating the St. Matthew CME Church State Rally with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

St. Matthew CME Church State Rally June 20-23, 2014 9:00 am – 11:00 pm

- Eighth Street, Cleveland Avenue to Indiana Street

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; 1) Hiring off-duty certified law enforcement officers as required; and 2) Obtaining barricades to close the streets in accordance with requirements of the Police, Fire and Public Works and Utilities Departments.

City of Wichita
City Council Meeting
June 17, 2014

TO: Mayor and City Council

SUBJECT: Community Events – Bradley Fair Summer Concert (District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closure.

Background: In accordance with the Community Events procedure the event promoter Jessica Dunbar, Laham Development is coordinating the Bradley Fair Summer Concert with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Bradley Fair Summer Concert July 3, 2014 6:00 pm – 11:00 pm

- Bradley Fair Parkway, Rock Road to East Wilson Estates Parkway

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; 1) Hiring off-duty certified law enforcement officers as required; 2) Obtaining barricades to close the streets in accordance with requirements of the Police, Fire and Public Works and Utilities Departments; and 3) Securing a Certificate of Liability Insurance on file with the Community Event Coordinator.

City of Wichita
City Council Meeting
June 17, 2014

TO: Mayor and City Council

SUBJECT: Community Events – Glow Run 5K Wichita (District IV)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events procedure the event promoter Sally Bowerman, KC Running Club is coordinating the Glow Run 5K Wichita with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Glow Run 5K Wichita June 28, 2014 8:00 pm – 11:00 pm

- McLean Boulevard, Harry Street to Douglas Avenue
- Maple Street, Sycamore Street to McLean Boulevard

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; 1) Hiring off-duty certified law enforcement officers as required; 2) Obtaining barricades to close the streets in accordance with requirements of the Police, Fire and Public Works and Utilities Departments; and 3) Securing a Certificate of Liability Insurance on file with the Community Event Coordinator.

City of Wichita
City Council Meeting
June 17, 2014

TO: Mayor and City Council

SUBJECT: Community Events – Kindness Moves Me 5K (District VI)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events procedure the event promoter Trevor Dormstetter, goracetiming.com., is coordinating the Kindness Moves Me 5K with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Kindness Moves Me 5K June 28, 2014 7:00 am – 11:00 am

- Main Street, Ninth Street to Tenth Street
- Main Street, Ninth Street to Murdock Street
- Murdock Street, Main Street to West River Boulevard
- West River Boulevard, Murdock Street to 11th Street
- 11th Street, West River Boulevard to Pearce Street
- Oak Park Drive North, 11th Street to Forest Street
- Oak Park Drive North, Forest Street to Oak Park Drive South
- Oak Park Drive South, Forest Street to Ninth Street
- Ninth Street, Biting Street to Back Bay Boulevard
- Back Bay Boulevard, Ninth Street to Waco Street
- Eighth Street, Waco to Main Street

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; 1) Hiring off-duty certified law enforcement officers as required; 2) Obtaining barricades to close the streets in accordance with requirements of the Police, Fire and Public Works and Utilities Departments; and 3) Securing a Certificate of Liability Insurance on file with the Community Event Coordinator.

City of Wichita
City Council Meeting
June 17, 2014

TO: Mayor and City Council

SUBJECT: Community Events – Waterfront Triathlon (District II)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events procedure the event promoter Patrick Todd, Oz Endurance is coordinating the Waterfront Triathlon with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Waterfront Triathlon July 22, 2014 6:30 am – 10:00 am

- 21st Street North, Webb Road to Greenwich Road
- Greenwich Road, 21st Street North to 13th Street North
- 13th Street North, Greenwich Road to Webb Road
- Webb Road, 13th Street North to 21st Street North

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; 1) Hiring off-duty certified law enforcement officers as required; 2) Obtaining barricades to close the streets in accordance with requirements of the Police, Fire and Public Works and Utilities Departments; and 3) Securing a Certificate of Liability Insurance on file with the Community Event Coordinator.

City of Wichita
City Council Meeting
June 17, 2014

TO: Mayor and City Council

SUBJECT: Community Events – Head for the Cure 5K (District VI)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events procedure the event promoter Brad Ziegler, Head for the Cure Foundation is coordinating the Head for the Cure 5K Wichita with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Head for the Cure 5K Wichita June 21, 2014 8:00 am – 11:00 am

- Rock Island Street, First Street to Waterman Street
- Mead Street, First Street to Waterman Street
- Waterman Street, Rock Island Street to Mead Street
- First Street, Mead Street to Hydraulic Avenue

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; 1) Hiring off-duty certified law enforcement officers as required; 2) Obtaining barricades to close the streets in accordance with requirements of the Police, Fire and Public Works and Utilities Departments; and 3) Securing a Certificate of Liability Insurance on file with the Community Event Coordinator.

City of Wichita
City Council Meeting
June 17, 2014

TO: Mayor and City Council

SUBJECT: Design Services Agreement for Stonebridge Second and Third Additions
(District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the agreement.

Background: On May 1, August 2, 2007, and November 26, 2013, the City Council approved petitions for water, paving, and sanitary sewer improvements to serve a new residential development located north of 13th Street North, west of 159th Street East.

Analysis: The proposed agreement between the City and Baughman Company provides for design of the improvements. In accordance with Administrative Regulation 1.10, Baughman is an engineering consultant upon whom the City and developer mutually agree for this work, and, as this firm provided the preliminary engineering services for the platting of the subdivision, can expedite plan preparation.

Financial Considerations: Payment to Baughman will be on a lump sum basis of \$42,700 and will be paid by special assessments.

Legal Considerations: The Law Department has reviewed and approved the agreement as to form.

Recommendation/Action: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachments: Agreement.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

BAUGHMAN COMPANY, P.A.

for

STONEBRIDGE 2ND and 3RD ADDITION

THIS AGREEMENT, made this _____ day of _____, 2014, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the "ENGINEER".

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NO. 448 90295 serving Lots 4 through 23, Block B, Stonebridge 2nd Addition, and Lots 13 through 26, Block A, Stonebridge 3rd Addition (north of 13th St N, west of 159th St E) (Project No. 448-90295_735506).

LATERAL 3, MAIN 19, FOUR MILE CREEK SEWER serving Lots 8 through 16, Block B, Stonebridge 2nd Addition, and Lots 17 through 26, Block A, Stonebridge 3rd Addition (north of 13th St N, east of 150th St E)(Project No. 468-84148_744368).

GRAYSTONE, SUMMERFIELD, TERHUNE, SUNDANCE serving Lots 4 through 23, Block B, Stonebridge 2nd Addition and Lots 13 through 26, Block A, Stonebridge 3rd Addition (north of 13th St N, east of 150th St E) (Project No. 472-84593_766309).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Stonebridge 2nd and 3rd Addition and to perform the project tasks outlined in the SCOPE OF SERVICES (**Exhibit "A"**).

II. IN ADDITION, THE ENGINEER AGREES

- A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in **Exhibit "A"**.
- B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
- C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
- D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.
- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.
- F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in **Exhibit "B"** which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.
- H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with **Exhibit "A"**; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.
- I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.
- J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

- K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

- A. To furnish all available data pertaining to the project now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.
- B. To provide standards as required for the project; however, reproduction costs are the responsibility of the ENGINEER, except as specified in **Exhibit "A"**.
- C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
- D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
- E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
- F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

- A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 448 90295	\$ 6,900.00
Project No. 468 84148	\$10,500.00
Project No. 472 84593	<u>\$25,300.00</u>
TOTAL	\$42,700.00

- B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the project such as, but not limited to:
1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the project.
 2. Additional design services not covered by the scope of this agreement.
 3. Construction staking, material testing, inspection and administration related to the project.
 4. A major change in the scope of services for the project.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

- A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the project is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
- B. That the field notes and other pertinent drawings and documents pertaining to the project shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the project.
- C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
- D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
- E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
- F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
- G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.
- H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

Carl Brewer, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.

ATTEST:

(Name/Title)

EXHIBIT “A”

SCOPE OF SERVICES
Stonebridge 2nd & 3rd Addition
(north of 13th St N, west of 159th St E)
(Project No. 448-90295/468-84148/472-84593)

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared per **Attachment No. 1 to Exhibit “A”**.

In connection with the services to be provided, the ENGINEER shall:

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. **Field Surveys.** Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the project limits prior to the ENGINEER conducting the field survey for the project. Utility information shall be clearly noted and identified on the plans.
2. **Storm Water Pollution Prevention.** On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a Notice of Intent (NOI) prior to bidding; site-specific erosion control plan; and standard Best Management Practice (BMP) detail sheets per **Attachment No. 1 to Exhibit “A”**.
3. **Soils and Foundation Investigations.** The CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the project, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The ENGINEER’S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
4. **Review Preliminary Design Concepts.** Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
5. **Drainage Study.** When applicable, conduct a detailed study to explore alternative design concepts concerning drainage for the project. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of final check plans. Such written findings and recommendations must be in a format which is self explanatory and readily understood by persons with average backgrounds for the technology involved.
6. **Plans & Specifications.** Prepare engineering plans, plan quantities and supplemental specifications as required. Pay items of work shall conform to the CITY’s Master Bid Item List. Engineering plans will include incidental drainage where required and permanent traffic signing. The project’s plans and proposed special provisions shall address the requirements included in the City’s Administrative Regulations 6.5, “Cleanup, Restoration or Replacement Following Construction.” Also, final plans, field notes and other pertinent project mapping records are to be submitted per **Attachment No. 1 to Exhibit “A”**. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and

approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.

7. Landscaping. Where landscaping may be required along arterial streets, ENGINEER should use plant material that is drought resistant and requires low maintenance in a xeriscape concept, and is consistent with the City of Wichita Landscape Policy for Arterial Streets. A landscape architect should be included on the Consultants' Design Team.
8. Property Acquisition. Prepare right-of-way/easement tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way or easements. This shall include the setting monuments of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations. **The ENGINEER shall perform all necessary title work and sufficient research for determination of current right-of-way and easements.**
9. Utility Coordination. Identify all potential utility conflicts and provide preliminary field check plans showing the problem locations, posted to the City's FTP site. **Plans will clearly identify specific utility company facilities by color and by name (i.e. not just "gas" or "fiber optic").** ENGINEER shall include a conflict list for each utility, also posted to the FTP site. ENGINEER shall meet with utility company representatives to review plans and utility verification forms (**Attachment No. 3 to Exhibit "A"**) at each milestone date and as directed by the CITY and as determined necessary by the ENGINEER. This information will be compiled into a summary report (**Attachment No. 4 to Exhibit "A", also available on the City's FTP site**) maintained and updated by ENGINEER as necessary to present a cohesive and reflective status of utilities, and provided to the City as necessary. **ENGINEER shall maintain involvement with utility companies until all conflicts have been resolved (not just identified).** When appropriate, the City Engineer will approve the identification on plans of conflicts to be resolved during construction. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction.
10. Staking Information. All applicable coordinate control points and related project staking information shall be furnished on a map on the plans, as well on CD-ROM, as a text file, along with the project PDF's. This coordinate information will be used by the CITY for construction staking purposes. See **Attachment No. 2 to Exhibit "A"** for required coordinate information.
11. Shop Drawings. All shop drawings submitted by the contractor for the project shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the project.
12. Public Meeting. The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.
13. New Right-of-Way Monumentation. The ENGINEER shall complete permanent monumentation of all new right-of-way, and complete and submit all necessary legal documentation for same.
14. Section Corner Monuments. The Engineer shall provide services required by KSA Chapter 58, Article 20, Statute 58-2011, any time a section corner or monument will be endangered, disturbed, or removed. The City of Wichita Construction Engineer will receive a copy of all Land Survey Reference Reports submitted to the Secretary of State Historical Society. All costs associated with this effort shall be the responsibility of the Engineer. The City will provide a three business day notice to the Engineer to mark the monument location for re-establishment after pavement work is completed. The City will then core and install a cast iron monument box and cover. The Engineer will be notified within three business days after the box is installed to reset the final monument.

15. Permits. The ENGINEER shall prepare any and all necessary permits for this project, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT. **The ENGINEER shall be responsible for the cost of all permit fees that are required to complete the PROJECT. The cost shall be included in the design fee submitted by the ENGINEER.**
16. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans, specifications and estimates to the CITY within the time allotted for the project as stipulated below; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.
- (a) Field check plans of the project for distribution to utilities by _____.
 - (b) Completion of all work required by this agreement (including submittal of final approved plans, field notes, and related project documents by _____.

Attachment No. 1 to Exhibit “A” – Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

In addition, two (2) sets of 11”x17” plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City, prior to bidding. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Storm Water Division
455 N. Main 8th Floor
Wichita, KS 67202

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must also include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer’s estimate. Bidding erosion control as “1 LS” is not allowed.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City’s current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

Attachment No. 2 to Exhibit “A” – CIP Scope of Services

Required Plan Coordinate Information

Arterial Street Projects & Infill (Existing Neighborhoods)

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments
- benchmarks, including TBM set with preliminary survey
- center of manholes
- end of manhole stubs (when longer than five feet)

II. WATER LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

IV. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- center of signal poles, service and junction boxes, controller, etc.; ends and P.I.'s for retaining walls, at back of walls

THE SAME COORDINATE SYSTEM SHALL BE USED FOR ALL SEPARATE PHASES OF A LARGER INFILL OR ARTERIAL STREET PROJECT.

Sub-Division Projects

I. SANITARY SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of manholes
- back and/or front lot corners for specifically referenced easement grading, outside that included in mass grading projects; include coordinates for vertical P.I. locations not at lot corners
- end of manhole stubs (when longer than five feet)

II. WATER DISTRIBUTION SYSTEM

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)
- FH's, tees, bends, air release, valves

III. WATER SUPPLY LINE

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all possible control as established or attained during preliminary survey, including but not limited to – section corners, property irons, intersection center-center irons, other set monuments; any necessary points for establishing BL, including P.I.'s in BL
- benchmarks, including TBM set with preliminary survey
- beginning and ends of pipe
- all P.I.'s/deflections (horizontal and vertical)

- FH's, tees, bends, air release, valves

IV. STORM SEWER

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- for skewed inlets typically in intersection radii, or not parallel to baseline – center of curb inlet **AND** center of inside face on Type 1/1A curb inlets; center of high edge on Type 2 curb inlets
- end of end section, at CL of pipe
- center, end of pipe at outside face of headwall; if headwall not perpendicular to pipe, each corner of headwall at outside face
- center of all drop inlets, manholes, and other structures
- center of RCBC at each end (outside face of hubguard); if box rotated, each corner, outside face

V. MASS GRADING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey
- all lot corners
- any grade breaks between front & rear lot corners
- high points/low points within drainage easements
- street area
 - centerline @ 100' Sta on tangent sections
 - pc/pt points & 50' along curves
- special drainage swales
 - pc/pt points, pi's & 50' Sta in between
- ponds
 - any grades breaks between pond bottom and rear property line
 - pc/mid radius/pt around pond curves
- for irregular shaped lots (mainly commercial or industrial developments) provide TIN file

VI. PAVING

Provide a standard bubble map, as part of the plans, showing locations of numbered points, and a table with point number, northing and easting coordinates, description, and BL station for each point, for the following:

- all platted control irons (set or not), including plat boundary irons, for the entire sub-division, not just the current phase
- benchmarks, including TBM set with preliminary survey

In addition to the required coordinate information, the following shall be included in all plans, at a minimum, as needed for construction staking on all City projects.

- Include copy of plat(s) on all plans, as relevant and approved by the Design Engineer
- Benchmarks – minimum of two City standards, four total desirable; as close to project as possible, even if TBM set with preliminary survey.
- Benchmark elevations must be in the same datum as the design (i.e. NAV 88 design needs NAV 88 benchmarks, not NAV 29)
- All control irons/identified property irons shall be shown on plans, with BL stationing and offset
- Show deflection angles in BL, and/or bearing/azimuth of BL sections
- Arterial project side streets – provide BL station at CL of intersection of the two streets, on the BL; BL station and offset to CL of side street at removal limits; include deflection angle from BL to CL of side street
- Existing FL/pavement grades shown at all match points
- Top of curb grades and stationing at all ends-of-return and horizontal/vertical P.I.'s, not just even stationing
- CL top of pavement grades for arterial
- CL elevation for streets on mass grading work @ 100' Sta in tangent sections and 50' on curves.
ELEVATION SHALL BE TO TOP OF ROCK BASE.
- BL station and offset at all R/W changes; include R/W corners at all intersections, even if no change in R/W
- Clearly show existing grades at R/W and beyond; identify removal limits beyond R/W (for grade purposes) with BL station and offset, or dimension from R/W
- Show offset distance between BL and proposed street CL when not the same; establish clear relationship between the two
- BL station and offset to center of signal poles, service and junction boxes, controllers, etc.
- BL station and offset to back of retaining walls, at ends of walls and all P.I.'s
- Concrete pavement – provide detailed joint pattern, dimensions, and elevations for all valley gutters, intersections, and mainline pavement; should be separate plan sheet(s) with clear and project-specific details
- Storm Sewer – BL station and offset for all curb inlets, drop inlets, manholes, and other structures (to the coordinate point locations detailed in previous sheets); same for SS and WL – pertinent facilities should be referenced to BL station and offset
- Sanitary Sewer – show deflection angles between MH's
- Flow line elevations for manhole stubs
- Curve Tables – should include bends, tees, valves, FH's etc. for waterlines; ends-of-return, P.I.'s, etc. for paving
- Should be able to accurately scale off of plans

Attachment No. 3 to Exhibit “A” – Scope of Services

Project Name

Utility Location Verification Non-CIP Project

Projected Bid Date:

UTILITY: _____ **Checked by** _____ **on** _____

Utility Location:

- ☐ None in Project Limits ☐ In Project Limits, No Relocation Necessary
☐ Utility will need to relocate ☐ Other (please describe)

Briefly Describe Type and Location of Facilities within Project:

Estimate Time for Relocation: ☐ < 3 months ☐ 3-6 months ☐ 6-9 months ☐ > 9 months

Weather Sensitive: ☐ Yes ☐ No If yes, please explain: _____

Utility Plan Review:

☐ Correct as Shown ☐ Corrections needed ☐ Attachments provided for Consultant

Corrections necessary on plan sheets:

Additional Information requested from Consultant: _____

Please email this form on or before

to:

If relocation is necessary:

Estimated clear date: _____

Completed by _____ **(utility representative) on** _____ **(date)**

Upon completion of relocation:

Relocation complete on: _____

Completed by _____ **(utility representative) on** _____ **(date)**

Attachment No.4 to Exhibit "A" - Scope of Services

Individual Project Name (i.e., Amidon, 21st to 29th Street North)												
Current Date	KDOT Proj. NO/ City Proj. NO	City Design Manager	Consultant	Date of First ULCC	Date of Second ULCC	Date of Plan Revision Distribution	Date of Second Plan Revision Distribution	R/W Purchased Y/N	Date Utilities notified of R/W completion	Project Proposed Bid Date	Proposed Utility Clear Date (project)	
2/21/2013	1111111/ 2222222	Kallman	Ken Lee/ Ruggles & Bohm	2/21/2013	2/21/2013			No				
			Utility Contact	Utility needs to relocate (Y/N)	Utility in Private Easement (Y/N)			Utility needs PROPOSED R/W to relocate (Y/N)	Relocation Weather Sensitive (Y/N)	Estimated Date of Utility Design Completion	Time needed for relocation after utility design complete	Individual Utility Clear Date
Westar (Distribution)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												
Westar (Transmission)												
Location in Project: (Describe Existing Facilities)												
Relocation Needs:												
Comments:												

KGS
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Black Hills
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
AT&T
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Cox
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Water
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Sewer
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

Stormwater
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:
Other
Location in Project: (Describe Existing Facilities)
Relocation Needs:
Comments:

EXHIBIT "B"

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
 - 1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
 3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
 4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
 5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
- D. Exempted from these requirements are:
1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
 2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

**City of Wichita
City Council Meeting
June 17, 2014**

TO: Mayor and City Council

SUBJECT: North Industrial Corridor (NIC) Groundwater Contamination Project – Professional Services Contract (Districts I and VI)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Approve the contract for completion of the Monitored Natural Attenuation (MNA) Study and East of Chisholm Creek (ECC) Investigation phase of the North Industrial Corridor (NIC) Project, adopt the bonding resolution, and approve any necessary budget adjustments.

Background: The NIC project is a very large and complex groundwater pollution site with more than 4,000 acres of commercial, industrial and residential properties within its boundaries. The groundwater pollution is a result of historical use of industrial chemicals by a number of different parties. The City is bound by a settlement agreement with the Kansas Department of Health & Environment (KDHE) to manage the groundwater and orphan site remediation. The official Corrective Action Decision (CAD) issued by KDHE lays out the remediation requirements. The MNA Study and ECC Investigation are critical components of the remedial design phase required in the CAD.

Analysis: The MNA Study and ECC Investigation are required in order to achieve an approved remedial design for the cleanup system and to demonstrate the effectiveness of the related, preferred remedial actions. The selection of these professional services followed the City's Administrative Regulation for competitive procurement by a selection committee comprised of City staff. The selection committee interviewed SCS Aquaterra, CDM Smith, and ENVIRON. Based upon the proposals, clarifying proposals, and presentations, CDM Smith was selected by the committee based primarily upon its professional experts' qualifications, knowledge, and experience with groundwater investigations, MNA studies, and history of successful negotiations with KDHE on large environmental cleanup projects.

Financial Considerations: Based upon the specific tasks to be performed under the Scope of Services, the not-to-exceed cost is \$277,600 for professional services associated with the study and investigation. These costs are typical for a large environmental cleanup project. The NIC fund includes the NIC Tax Increment Financing allocations and settlements. Funding is available to cover the cost of this contract.

Initial costs for the remedial action ranged from \$43 million for the preferred remedial action to \$63 million for the expanded remedial action. A potential project savings of approximately \$20 million may be realized if the technical results derived from this study support the implementation and acceptance by KDHE of the preferred remedial actions.

Legal Considerations: The Law Department has reviewed and approved the contract and bonding resolution as to form.

Recommendation/Action: It is recommended that the City Council approve the contract with CDM Smith, authorize the necessary signatures, adopt the bonding resolution, and approve any necessary budget adjustments.

Attachment: Contract and bonding resolution.

CONTRACT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

CDM Smith Inc.

THIS CONTRACT, made this _____ day of _____, 2014, by and between THE CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and CDM Smith Inc., party of the second part, hereinafter called the "CONSULTANT".

WITNESSETH:

WHEREAS, The CITY has entered into a Settlement Agreement with the Kansas Department of Health and Environment ("KDHE"), designated as Case No. 95-E-0321, under which the CITY is obligated to perform investigations and to conduct remedial activities to address groundwater contamination within an area the KDHE defines as the North Industrial Corridor Site ("the NIC Site") in Wichita, Kansas, which requires the CITY to conduct a Remedial Action with respect to groundwater contamination in the NIC Site as documented in the KDHE approved Remedial Investigation Report, Remedial Investigation Addendum Report, Baseline Risk Assessment Report, Feasibility Study Report, and in accordance with the KDHE Corrective Action Decision (CAD) (hereinafter collectively referred to as the PROJECT). The Monitored Natural Attenuation (MNA) Study and East of Chisholm Creek (ECC) Investigation work must be completed to determine and confirm the required Remedial Action; and

WHEREAS, the CITY entered into the North Industrial Corridor Participation Agreement with private Participants who undertake certain activity or assist the CITY with respect to activities required by the Settlement Agreement, and some of the Participants have previously conducted or funded environmental investigations and remediation at or near their individual facilities or properties in the NIC Site. CONSULTANT may be required to consult with said Participants during the MNA Study and ECC Investigation phase of this PROJECT; and

WHEREAS, CONSULTANT has available and offers to provide the necessary professional services to accomplish the MNA Study and ECC Investigation work within the required time; and

WHEREAS, the CITY is authorized by law to employ consultants to assist with the completion of this PROJECT.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. **SCOPE OF SERVICES**

A. The CONSULTANT shall furnish professional services as set out in Exhibit "A", which is attached hereto and incorporated herein by reference.

B. In the event of delays in the performance by the CONSULTANT due to circumstances caused by CITY, the CONSULTANT'S schedule of performance shall be equitably adjusted to account for such delay.

II. **IN ADDITION, THE CONSULTANT AGREES**

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in SCOPE OF SERVICES in Exhibit "A" attached hereto and fully incorporated herein by this reference.

B. To attend meetings with the CITY, Participants, and other local, state and federal agencies as described by the SCOPE OF SERVICES (Exhibit "A").

C. To make available during regular office hours at its Wichita office all records, documents, electronic data/information, and other material (written or electronic) covering the services described in Exhibit "A" as the CITY may wish to examine periodically during performance of this Contract.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by negligent errors, omissions or acts of CONSULTANT, its agents, servants, employees, or subcontractors occurring in the performance of its service under this Contract.

E. To maintain field notes, calculations, sketches, drawings, books, electronic documents, papers, accounting records, and evidence pertaining to costs incurred by CONSULTANT and to make such material available to the CITY periodically as required by the CITY and to deliver such documents in paper and/or electronic format upon request of the CITY during the Contract period, and for three (3) years from the date of final payment under the Contract.

F. To comply with all federal, state and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1974, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "C" which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as hereinafter provided and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To submit periodic billings to the CITY of the costs accrued in the performance of the services herein described.

I. To complete the services to be performed by CONSULTANT within the time allotted for the PROJECT in accordance with Exhibit "A" EXCEPT that the CONSULTANT shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the CONSULTANT. PROVIDED that CONSULTANT shall be responsible for all Stipulated Penalties ultimately assessed against the City under ¶130 of the Settlement Agreement with KDHE (for failure to submit reports or deliverables in the time required or failure to follow the notice of deviation requirements of the Quality Assurance section) to the extent that such Stipulated Penalties result from negligent actions or inactions of the CONSULTANT and are not occasioned in whole or in part by any delays or non-performance resulting from Force Majeure events, occurrences or conditions; or any actions or inactions of the CITY, Participants, KDHE, or any other regulatory agency having jurisdiction over the project.

J. (i) Covenants and represents to be responsible for the professional and technical accuracies of the work or material furnished by the CONSULTANT under this Contract; and (ii) CONSULTANT further agrees, covenants and represents that all work or material furnished by CONSULTANT, its agents, employees and subcontractors, under this Contract, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

K. CONSULTANT shall procure and maintain such insurance as will protect the CONSULTANT from damages resulting from negligent acts of the CONSULTANT, its agents, officers, employees and subcontractors in the performance of the professional services rendered

under this Contract. Such policy of insurance (including any excess liability coverage) shall be in an amount not less than \$3,000,000 aggregate. In addition, a Worker's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment which, for any reason, may not fall within the provisions of the Worker's Compensation Law. The liability limit shall be not less than:

Workman's Compensation - Statutory

Employer's Liability - \$500,000.00 each occurrence

Further, a comprehensive general liability policy shall be procured and maintained by the CONSULTANT that shall be written in a comprehensive form and shall protect CONSULTANT against all claims arising from injuries to persons (other than CONSULTANT'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of CONSULTANT, its agents, officers, employees or subconsultants in the performance of CONSULTANT services under this Contract. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time CONSULTANT starts any work under this Contract. The CONSULTANT shall furnish the CITY copies of all insurance policies or certificates of insurance that relate to the insurance policies that must be maintained hereunder. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

L. To designate a Project Manager for the coordination of the work that this Contract requires to be performed. The CONSULTANT agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this Contract. The CONSULTANT shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

M. If authorized in writing by CITY, CONSULTANT agrees to prepare to serve or to serve as a consultant or expert witness for CITY in any litigation, administrative hearing, or other legal proceedings involving this PROJECT. Compensation for such services (including responding to

any subpoenas) shall be compensated as provided in Exhibit "B".

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY's files at no cost to the CONSULTANT. Confidential material so furnished and marked will be kept confidential by the CONSULTANT.

B. To pay the CONSULTANT for its services in accordance with the requirements of this Contract.

C. To provide right of entry to areas under City control for CONSULTANT'S personnel in performing the services hereunder.

D. To designate a Project Manager for the coordination of the work that this Contract requires to be performed. The CITY agrees to advise the CONSULTANT in writing of the person(s) designated as Project Manager with the issuance of notice to proceed on the work required by this Contract. The CITY shall also advise the CONSULTANT of any changes in the person(s) designated Project Manager. Written notification shall be provided to the CONSULTANT for any changes exceeding one week in length of time.

E. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by CONSULTANT in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the CONSULTANT for the performance of its services shall be based on the actual hours of work performed and on the schedule of fees set out in Exhibit "B", which is attached hereto and incorporated herein by reference. In addition, CITY will reimburse CONSULTANT for its out-of-pocket expenses at the actual cost to CONSULTANT of such expenses. In no event will the total of all payments to CONSULTANT hereunder exceed the sum of two hundred seventy seven thousand six hundred dollars (\$277,600.00). Invoices shall be submitted on a monthly basis for review and approval and approval by the City.

B. If additional work should be necessary, by virtue of a major change in the scope of the proposed PROJECT as required by KDHE, the CONSULTANT will be given written notice by the CITY along with a request for an estimate of the time and materials costs to complete the specified additional work; but no additional work shall be performed nor shall additional compensation be paid except following the execution of a Supplemental Agreement duly entered into by the parties.

V. **THE PARTIES HERETO MUTUALLY AGREE:**

A. That the right is reserved to the CITY to terminate this Contract at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the CONSULTANT'S inability to proceed with the work, or because the services of the CONSULTANT, in the sole opinion of the CITY, are unsatisfactory; PROVIDED, however, that in any case the CONSULTANT shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this Contract, but in no case shall payment be more than the CONSULTANT'S Time and Materials costs based on the units rates outlined in Exhibit "B".

B. That the services to be performed by the CONSULTANT under the terms of this Contract are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

C. In the event of unavoidable delays in the progress of the work contemplated by this Contract, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the CONSULTANT shall request extensions in writing giving the reasons therefor.

D. It is further agreed that this Contract and all other contracts entered into under the provisions of this Contract shall be binding upon the parties hereto and their successors and assigns.

E. Neither the CITY'S review, approval or acceptance, nor payment for, any of the work or services required to be performed by the CONSULTANT under this Contract shall be construed to operate as a waiver of any right under this Contract or any cause of action arising out of the performance of this Contract.

F. The rights and remedies of the CITY provided for under this Contract are in addition to any other rights and remedies provided by law.

G. It is specifically agreed between the parties executing this Contract, that it is not intended by any of the provisions of any part of this Contract to create the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for damages pursuant to the terms or provisions of this Contract.

H. CITY agrees that CONSULTANT will not be responsible for liability caused by the presence or release of hazardous substances or contaminants at the site, unless the release results from the sole negligence of CONSULTANT or its subcontractors. At no time shall title to hazardous substances, solid wastes, petroleum contaminated soil or other regulated substances pass to

CONSULTANT, nor shall any provision of this Contract be interpreted to permit or obligate CONSULTANT to assume the status of a “generator,” “owner,” “operator,” “transporter,” “arranger” or “treatment, storage or disposal facility” under state or federal law. The provisions of this Article V.H. shall survive any termination of this Contract.

IN WITNESS WHEREOF, the CITY and the CONSULTANT have executed this Contract as of the date first above written.

CITY OF WICHITA, KANSAS

BY _____
Carl Brewer, Mayor

ATTEST:

Karen Sublett
City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law

_____ Consultant

BY _____
Signature

Print Name

Title (President or Corporate Officer)

ATTEST:

RESOLUTION NO. 14-167

RESOLUTION AUTHORIZING THE EXECUTION OF A STUDY/INVESTIGATION RELATING TO THE NORTH INDUSTRIAL CORRIDOR CONTAMINATION PROJECT; AND PROVIDING FOR THE PAYMENT OF THE COSTS THEREOF.

WHEREAS, the City Council (the “Governing Body”) of the City of Wichita, Kansas (the “City”) has heretofore, pursuant to K.S.A. 12-1770 *et seq.* (the “Act”) and Resolution R-96-072 (adopted March 5, 1996) designated the North Industrial Corridor Redevelopment District Area to be a blighted area and proposed a district plan for the redevelopment of such district, and pursuant to Ordinance No. 43-009 (adopted March 19, 1996) approved the creation and set boundaries of such district and

WHEREAS, Resolution R-96-283 (adopted July 9, 1996) set for August 13, 1996 the public hearing for consideration of the redevelopment project plan for the North Industrial Corridor Redevelopment District, and Section 6 of such Resolution contained language stating that it was determined and notice thereby given that the City may, as part of the redevelopment project plan, issue full faith and credit tax increment bonds to finance the costs of such plan, in whole or on part; and,

WHEREAS, the Governing Body conducted such public hearing on August 13, 1996, and following such hearing adopted an Ordinance approving the redevelopment project plan for the project area within the North Industrial Corridor Redevelopment District; and,

WHEREAS, the Governing Body has been presented a proposed contract with CDM Smith for the preparation of Monitored Natural Attenuation Study and East Chisholm Creek Investigation work associated with the North Industrial Corridor Redevelopment Project in the total contract amount of \$277,600 (the “Contract”); and

WHEREAS, the Governing Body is authorized by the Act to issue special obligation and / or full faith and credit bonds (the “Bonds”) to pay remediation cost of the North Industrial Corridor Redevelopment Project, including the Contract.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. The Mayor is hereby authorized to execute the Contract in substantially the form submitted to the City Council this date with such minor modification thereto as may be approved by the Law Department.

Section 2. The costs of the Contract and associated costs of issuance and interest on interim financing are hereby authorized to be paid from the proceeds of Bonds of the City. The Bonds may be issued to reimburse expenditures made on after the date which is 60 days before the date of this Resolution, pursuant to Treasury Regulations § 1.150-2.

Section 3. This resolution shall be in full force and effect from and after its adoption.

(BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK)

ADOPTED by the City Council of the City of Wichita, Kansas, on _____ 2014.

(SEAL)

Carl Brewer, Mayor

ATTEST

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

Exhibit A

Scope of Work North Industrial Corridor MNA Study and East of Creek Investigation

Scope of Work

The scope of services described herein are for environmental consulting and engineering services associated with the North Industrial Corridor (NIC) project, specifically the MNA Study and East of Creek Investigation activities. Descriptions of the work to be conducted for each task are provided below. Throughout these tasks, CDM Smith will collaborate with the City and NIC Technical Advisory Committee (TAC) as appropriate for reviews and submittals. Collaborative efforts also include up to three technical meetings with the City and TAC for each task to discuss work activities. Consistent with the review process described in the 1996 Participation Agreement, CDM Smith will provide draft copies of plans, reports, and other site-wide related documents to the City and TAC for review prior to submittal to the KDHE. The submittals to the TAC will be at least 20 days prior to the document's submittal to the KDHE. The NIC TAC has 10 days to review and comment on each draft submittal.

Task Descriptions

Task 1 – East of Creek Investigation (which incorporates the KDHE-required Groundwater/Surface Water Interaction Study)

The East of Creek (EOC) investigation is required to determine the extent of contaminated groundwater within the NIC site on the east side of Chisholm Creek, the groundwater and surface water interaction across the creek, and the migration pathways for the trichloroethene (TCE) and other contaminants historically found east Chisholm Creek (i.e. coming from NIC or other sources outside of NIC). Under this task, CDM Smith will:

- Prepare discussion documents (handouts) for technical meetings with City staff and the TAC (if necessary).
- Prepare the work plan for City, TAC, and KDHE review and approval.
- Conduct the field activities as described below.
- Prepare the investigation report discussing the field activities, results, conclusions, and recommendations. The report will also include analytical laboratory data, summary data tables, and one or more figures as appropriate. Depending upon the investigation results, the recommendations could range from no further action, to a simple monitoring program, to a recommendation to implement the EAB contingency plan described in the KDHE Corrective Action Decision.
- Prepare up to two rounds of responses to City, TAC, and KDHE comment letters on the work plan and/or investigation report.

The milestone for preparation of the work plan is receiving the PDA data from the City's remedial design consultant. Additional milestones under this task include the technical meetings and City, TAC, and KDHE reviews and approvals of submitted documents.

Results from previous investigations have shown NIC site type contaminants (TCE and cis-1,2-dichloroethene [C12DCE]) in groundwater in shallow wells on both sides of the creek and in intermediate and deep samples on the east side of the creek. Therefore, following KDHE approval of the EOC work plan, CDM Smith will:

- Collect up to five surface water and nine monitoring well samples from select locations. Surface water and monitoring well samples will be submitted to an accredited offsite laboratory for analysis of VOCs by Method 8260B.
- Under the City's previous Remedial Investigation (RI) program, CDM Smith determined the NIC site as a whole was generally not affected by vertical gradients; however, some source area investigations performed by other parties have indicated possible localized vertical gradients. One example of this is at the former Safety-Kleen facility (SK); SK is adjacent to Chisholm Creek at approximately 25th Street and groundwater contamination from SK has been shown to migrate towards, and potentially underneath, the creek. As a result, water levels will be collected from the sampled wells and select surface water stations to assess if a vertical gradient is present within the EOC investigation area and affecting wells and/or aquifer conditions.
- CDM Smith will also obtain shallow, intermediate, and deep groundwater samples from up to 10 direct-push (DPT) probe locations in the work area and shallow and deep groundwater samples from up to 15 locations. Field activities will be conducted using an onsite laboratory in order to quickly and effectively determine progress and next steps; i.e., all DPT groundwater samples will be analyzed for select VOCs by an onsite laboratory using Method 8260B. The select VOCs for the onsite laboratory will be NIC site contaminants of concern (perchloroethene (PCE), TCE, C12DCE, 1,1,1-trichloroethane (TCA), carbon tetrachloride (CT), benzene, toluene, ethylbenzene, and xylenes (BTEX). The proposed program allows for a limited number of "step-outs" or additional sampling locations based on onsite results. A minimum of 20% of the DPT samples will be submitted to the offsite laboratory for results confirmation with analysis for VOCs by Method 8260B. Use of an onsite laboratory with offsite confirmation sampling is an approved KDHE methodology and has been used extensively in previous investigations within the NIC site as well as throughout the U.S. Collecting DPT samples north of 21st Street may not be feasible due to the presence of existing petroleum seep barriers at the former Coastal Derby facility. If we are unable to collect DPT samples in this area, CDM Smith will evaluate available data assumed to be provided by the Coastal Derby and SK responsible parties.

The cost to complete Task 1 services as described is \$67,900.

Task 2 – MNA Study

The general purpose for this task is to assess MNA processes within GWU1 and collect empirical data to determine whether implementation of the contingency alternative (extraction well installation) will be necessary. Results from the City's NIC site-wide RI/FS activities indicate that some natural attenuation of chlorinated solvents in groundwater is occurring via anaerobic degradation mechanisms in areas of GWU1 also impacted by petroleum hydrocarbons. A key purpose of the MNA Study is to further assess MNA in the northeast part of NIC site, namely the Coleman Northeast/Unocal downgradient plume area north of the former Coastal Derby Refinery (located in GWU5). Results from the study will be used to determine if MNA is appropriate for continued evaluation as the recommended remedial alternative for GWU1; i.e., if MNA can be effective for reducing contaminant concentrations in GWU1 within a reasonable time frame. Under this task, CDM Smith will:

- Prepare discussion documents (handouts) for technical meetings with City staff and the TAC (if necessary).
- Conduct a one-day MNA Educational Seminar with the KDHE, City, and NIC TAC to discuss the proposed alternative activities. This seminar will occur prior to finalization of the work plan and submittal to the KDHE.
- Prepare the work plan for City, TAC, and KDHE review and approval.
- Conduct the field activities as described below.
- Prepare a Technical Memorandum (TM) following completion of the first field event – transmittal will include a water level map; a sample location map; and summary data tables for the event's water levels, MNA results, and VOC results; and a summary of results for the enzymes, isotopes, and magnetic susceptibility parameters. The technical memorandum will include the analytical laboratory data reports and a section which presents preliminary evaluations of the data and recommendations for the remainder of the study.
- Prepare the final MNA study report following completion of the second field event – report will include summary data tables, figures, analytical laboratory reports, a discussion of methodologies used during the study, MNA and VOCs results, a presentation of the microcosm study results, and time trends. The final report will include both field events and conclusions and recommendations will also be discussed.
- Prepare up to two rounds of responses to City, TAC, and KDHE comment letters on the work plan, TM, and/or final report. Comments on the TM received from the KDHE will be addressed during the preparation of the final MNA Assessment Report but will not result in a resubmittal of the technical memorandum.

The milestone for preparation of the work plan is receiving the PDA data from the City's remedial design consultant. Additional milestones include the MNA educational seminar with KDHE staff, technical meetings and City, TAC, and KDHE reviews and approvals of submitted documents. CDM Smith anticipates a minimum of 6 months between the PDA sampling event and 1st MNA sampling event and between the 1st and 2nd MNA sampling events to improve time trend evaluations, 1 year between events would be better. CDM Smith also anticipates a minimum of 1 year for the simple microcosm laboratory study.

The MNA Study required by the KDHE in the NIC Corrective Action Decision is based on EPA and KDHE historically-accepted practices. CDM Smith will discuss alternatives with the KDHE to incorporate up-to-date technologies and modifications from a typical program. Under the alternative program, CDM Smith will perform two field events rather than the two years of quarterly groundwater sampling required under a typical program.

- First, a single, comprehensive groundwater and soil sampling round will be conducted within GWU1 to document the occurrence of the MNA mechanisms. This event will occur at least six months, and preferably one year, after the NIC site-wide PDA sampling is completed to assist in trend evaluation.

The first MNA event will consist of a one-time sampling of 40 groundwater monitoring wells and four surface water locations within GWU1 for analysis of VOCs by Method 8260B. In addition, samples will be collected from 21 monitoring wells for analysis of the MNA parameters listed in Table MNA-1. Where wells are damaged beyond use or destroyed, groundwater will be collected using DPT or from temporary wells.

In addition to the conventional MNA analyses, activity-dependent enzyme probes will be collected to assess the activity of the bacterial enzymes responsible for aerobic cometabolism of chlorinated solvents; detecting enzyme activity means the degradation mechanism is active. Given the highly specialized nature of this analysis (and associated cost), shallow and deep groundwater samples from only 10 locations will be tested for this parameter. Also, samples will be collected for compound-specific isotopic analysis in which the stable carbon isotopes comprising TCE and C12DCE are quantified. With a single snapshot of isotopic ratios in TCE along the entire length of the GWU, it should be possible to detect degradation patterns, as well as the influence of new source areas, by evaluating changes in the ratio of the carbon isotopes, ^{13}C to ^{12}C . Shallow and deep groundwater samples from up to 10 locations will be tested for the carbon isotopes.

Also during the first MNA event, CDM Smith will collect up to 12 shallow and deep soil samples from the saturated zone at six locations throughout GWU1 using DPT. Prior to collection of the soil samples, electroconductivity logging will be conducted to confirm target sample depths. The collected soils samples will be screened for magnetic susceptibility to assess the presence of magnetite in soils which has been shown to facilitate significant biogeochemical reduction of TCE and C12DCE at several sites. Two additional soil and groundwater samples will be collected during this effort to perform a simple microcosm study in CDM Smith's Treatability Laboratory in Bellevue, Washington to measure abiotic reduction of TCE in site soils. The microcosms would be sampled over a period of at least 12 months and compared to appropriate controls to demonstrate whether this degradation mechanism is measurable in site soils.

Table MNA-1 MNA Analytical Parameters (Alternative Approach)

Field Parameters			
Conductivity	Temperature	Ferrous iron, dissolved	Dissolved oxygen
pH	Redox potential	Manganese, dissolved	
Laboratory Parameters for Groundwater			
Alkalinity	Chloride	Sulfate	Total Petroleum Hydrocarbons (TPH) – gasoline-range organics (GRO) and diesel-range organics (DRO)
Nitrogen (ammonia)	Methane, Ethane, Ethene	Sulfide	
Carbon dioxide	Nitrate/Nitrite	Total organic carbon	
Laboratory Parameters for Select Groundwater Samples			
Aerobic cometabolism bacterial enzymes		Isotopes	
Soil Analysis			
Magnetic susceptibility			
Biogeochemical Lab Study			
Soil and groundwater samples			

- A second MNA sampling event will occur at least six months, preferably one year, after the first MNA event, again to assist in trend evaluation. The second event will consist of a one-time sampling of 65 groundwater monitoring wells and four surface water locations within GWU1 for analysis of VOCs by Method 8260B. No other parameters will be analyzed during this event. Where wells are damaged beyond use or destroyed, groundwater will be collected using DPT or from temporary wells.

The MNA educational seminar mentioned above will present the proposed technical approach, goals, and evaluation parameters to be employed for the alternative MNA assessment program. CDM Smith is confident that this approach will allow KDHE to approve the MNA program described in this scope of

work; however, if the KDHE does not approve the proposed alternative, CDM Smith is prepared to conduct the MNA Study under a more typical program: usually sampling on a quarterly basis for two years. This program may consist of the following:

- Collect water levels at up to 28 shallow well locations (intermediate or deep wells will be used if shallow wells are not available).
- Collect water samples from 10 monitoring wells and four surface water locations during each quarterly monitoring event for analysis of VOCs by Method 8260B, and collect groundwater samples from 18 additional monitoring wells during each event for analysis of both VOCs by Method 8260B and the standard MNA parameters (as listed in Table MNA-2). Samples will be submitted to an accredited laboratory for analysis.

Table MNA-2 MNA Analytical Parameters (per the KDHE Policy #BER-RS-042)

Field Parameters			
Conductivity	Temperature	Ferrous iron, dissolved	Dissolved oxygen
pH	Redox potential	Manganese, dissolved	
Laboratory Parameters			
Alkalinity	Chloride	Sulfate	Total Petroleum Hydrocarbons (TPH) – gasoline-range organics (GRO) and diesel-range organics (DRO)
Nitrogen (ammonia)	Methane, Ethane, Ethene	Sulfide	
Carbon dioxide	Nitrate/Nitrite	Total organic carbon	

The cost to complete Task 2 services as described is \$209,700.

Exhibit B
Unit Rates for Staff and Expenses
North Industrial Corridor
MNA Study and East of Creek Investigation

Schedule for Hourly Labor Billing Rates

Billing rates are based on a personnel-specific basis. The billing rates shown herein are appropriate for technical staff conducting the activities described in the Scope of Work for the MNA Study and East of Creek Investigation. This allows the Consultant to continue to pay competitive rates and recover the appropriate fees on the project. The billing rates herein will apply for all work activities through 2015. For time spent by Consultant in performing work authorized by the Client, Client agrees to pay Consultant according to the following rate schedule. The rates include overhead and profit.

<u>CATEGORY</u>	<u>RATE</u>
<u>PROFESSIONAL SERVICES</u>	
Scientist/Engineer 8/9 (Program Director)	\$220.00
Scientist/Engineer 7 (Senior Professional/Project Manager)	\$170.00
Scientist/Engineer 6 (Professional III)	\$150.00
Scientist/Engineer 5 (Professional III)	\$130.00
Engineer 4 (Professional II)	\$115.00
Scientist 4/Engineer 3 (Professional II)	\$104.00
Scientist 3/Engineer 2 (Professional I)	\$98.00
Scientist 1/2, Engineer 1 (Professional 1/Technician)	\$80.00
<u>PROFESSIONAL SUPPORT SERVICES</u>	
Word Processor 4/5 (Senior Staff Support Services)	\$80.00
Word Processor 3 (Staff Support Services)	\$65.00
Geographic Information Systems (GIS) Specialist 4	\$115.00
Geographic Information Systems (GIS) Specialist 3	\$90.00
Drafter 5/6 (Senior CAD Operator)	\$90.00
Drafter 2/3 (CAD Operator)	\$80.00
<u>PROJECT SUPPORT SERVICES</u>	
Financial Contract Administrator 8	\$110.00
Financial Contract Administrator 7	\$85.00

Payment Method for Expenses

Air fare	\$ At Cost	Automobile rental	\$ At Cost
Equipment rental/purchase	\$ At Cost	Meals & lodging	\$ At Cost
Sample shipping charges	\$ At Cost	Printing & reproduction	\$ At Cost
Other miscellaneous costs	\$ At Cost		
Mileage	billed at the U.S. General Services Administration Rate at the time of billing		
Work done by subcontractors/consultants, including: laboratory services, drilling, surveying, direct-push services, and any other professional services			
			\$ At Cost

City of Wichita
City Council Meeting
June 17, 2014

TO: Mayor and City Council

SUBJECT: K-96 and Greenwich Interchange – Westar Relocation Agreement (District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the agreement.

Background: On January 7, 2014, the City Council approved a revised budget for design, right-of-way acquisition, utility relocation, and construction of improvements to the interchange at K-96 and Greenwich. In order to avoid conflicts with proposed improvements, the City Council approved an agreement with Westar Energy, Inc. (Westar) on February 4, 2014, for the relocation of electric distribution lines adjacent to Greenwich. The agreement provided that Westar would perform all relocation work and be reimbursed by the City since the power lines are located in a private easement. Work was originally expected to begin in spring 2014 following acquisition of right-of-way.

Analysis: Utility relocation work must be completed by September 2014 in order to avoid construction being delayed and additional charges being incurred. The portion of the Westar line under K-96 cannot be relocated in the summer months without modifications to the original relocation plan due to peak usage and the inability to shut the line down during high temperatures. The original agreement included replacing one conduit and cable under K-96 and the proposed agreement will allow both conduits and cables to be replaced at the same time, thus eliminating the need to shut down power and allowing the relocation to be completed on schedule. Additionally, this will allow the construction schedule to be maintained and delay charges avoided. The extra work required is a result of unexpected delays in the acquisition of right-of-way, which resulted in the utility relocation work being delayed as well. The original agreement provided that any expenses beyond the stated estimate would be paid by Westar, unless the increase was a result of changes requested by the City. The cost of the modifications will be split between the City and Westar.

Financial Consideration: The estimated cost of the additional work is \$48,500, with the City's portion being \$24,250. Payment to Westar will be on a cost reimbursement basis and funding is available in the existing approved budget.

Legal Considerations: The agreement has been reviewed and approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachments: Agreement.

Electric Line Modification/Relocation Agreement

WESTAR ENERGY, INC., a Kansas corporation hereinafter referred to as "WEI", hereby agrees with the City of Wichita hereinafter referred to as "CUSTOMER", that WEI will provide the labor, equipment, materials and supplies to modify or relocate the electric power line on the property herein described, according to the terms and conditions set forth below.

1. The parties agree that the line modification/relocation is necessary to improve the following described real property, so the property will be suitable for the intended use by CUSTOMER.:

Relocate Westar Energy electric facilities underneath K-96 on Greenwich Road. K-96 At Greenwich Rd. Interchange Project.

2. CUSTOMER will be liable for the new conduit and cable installation due to underground redesign requirements at the K-96 hwy crossing. The cost is based on the labor, equipment, supplies, materials and property acquisitions (such as easements of rights of way), needed to modify or relocate the line in accordance with standard industry practice and in order for the line to comply with WEI standards and the NESC. The cost of the line modification/relocation is **\$24,250.00**. WEI agrees to pay any expense above this estimated cost, unless changes are requested by the Customer and then both parties shall agree to the cost sharing before the work begins.
3. CUSTOMER will pay in full after completion of the line modification / relocation.
4. Provided the foregoing conditions have been met, WEI will begin work on the line on or before **05/21/14**, and will have the modification or relocation completed on or before **09/01/14**. However, WEI may adjust or extend this work schedule as weather conditions require.
5. When the line modification or relocation is complete, WEI will submit to CUSTOMER an invoice for the final modification / relocation costs. CUSTOMER will then have 30 days from receipt of the invoice to pay WEI the amount due.
6. The Kansas Overhead Power Line Accident Prevention Act, K.S.A. 66-1709 et seq., prohibits certain activity which is likely to place people, machinery or equipment within 10 feet of an overhead power line. Both prior to and after completion of the line modification / relocation, CUSTOMER will be responsible for limiting or prohibiting any work or activity on the above-described property, which activity is likely to violate the Overhead Power Line Act or to otherwise risk bodily injury or damage. CUSTOMER agrees to indemnify, hold harmless and defend WEI for any claims arising from CUSTOMER'S duties described in this paragraph.

Executed this 21st day of May, 2014

WESTAR ENERGY, INC.

CITY OF WICHITA

("CUSTOMER")

By: Miles Capps

By: _____

Title: Mgr. Dist. Design /Tech. Support

Title: _____

Attest: _____

Attest: _____

RA#5823/WT#001242

City of Wichita
City Council Meeting
June 17, 2014

TO: Mayor and City Council

SUBJECT: Granicus Live Meeting Management System upgrade

INITIATED BY: IT/IS

AGENDA: Consent

Recommendation: Approve the contract and additional expenses for Granicus Live Meeting Management System upgrade.

Background: The City of Wichita is utilizing software as a service as an annual subscription from Granicus Corporation for managing live City Council meetings for the City of Wichita since 2007. The system has hardware components, purchased from third party vendors and installed at the City to deliver the services. The system features live video streaming over the internet and live meeting management for handling the order of the meeting and voting. Over time, the third party voting buttons have proven difficult to troubleshoot, and unreliable. In addition, the City's support contract has expired and the hardware used to deliver the system is at the end of its useful life. Granicus Corporation has offered a new support contract which includes upgraded meeting components and software.

Analysis: The current system is error prone and antiquated. The hardware support has expired and must be replaced to provide quality service to the Council. Granicus is offering the software as a hosted service in the form of a three-year agreement. Additionally, the proposed upgrade provides hardware specifically designed for management of the meeting, voting, as well as internet video streaming. Hardware components will include touch pad voting and agenda display, internet video streaming that will work on all mobile devices, which will offer citizens a more robust meeting experience. Granicus technicians will be on site to provide installation, configuration and training to ensure a smooth transition to the upgraded system for the City Council.

Financial Considerations: Total costs for the Granicus Live Meeting Management System upgrade are estimated not to exceed \$170,365, including licensing and hardware and the three-year maintenance fee of \$147,600. Additionally the contract provides for onsite implementation costs not to exceed \$2,000. Funding of the costs will be from the IT operating expense budget.

This upgrade will increase annual maintenance costs to Granicus by \$13,800 for a new annual cost of \$49,200, for a total three-year maintenance cost of \$147,600.

Legal Considerations: The contract negotiated with Granicus Corporation was reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the contract and additional expenses for the Granicus Live Meeting Management System upgrade.

Attachments: Granicus Live Meeting Management System Upgrade Agreement

CITY OF WICHITA

Information Technology Agreement

THIS Information Technology Agreement ("Agreement") is made by and between; the City of Wichita, hereinafter referred to as the "City" and Granicus, hereinafter referred to as the "Contractor" and collectively referred to as the "Parties".

WHEREAS, the Contractor is a provider of high technology products and services for which City Code section 2.64.020(g) allows the Purchasing Manager to directly negotiate for services on a non-competitive basis, and

WHEREAS, the Contractor has represented that it is capable of implementing the Scope of Work as contained herein and the City has selected the Contractor as the offer or most advantageous to the City of Wichita; and

WHEREAS, all terms and conditions of the City's solicitation and the Contractor's response to such document(s) are incorporated herein by reference; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Definitions

- A. Acceptance shall mean the approval of all Deliverables by the CIO of the City or designated representative.
- B. Anonymous Data shall mean anonymous web data that by virtue of the method of collection can never reasonably be connected with the person providing. This data will be limited to aggregate information relevant to system utilization as associated with the Contractor's application implemented for the City.
- C. Change Request shall mean the document utilized to request changes or revisions in the Scope of Work.
- D. Chief Information Officer (CIO) shall mean the CIO of the City of Wichita or designated representative.
- E. Compliant Product shall mean a product or service that implements all of the PCI Security Standards Council Required Elements.
- F. Content shall mean any and all, graphics, video, audio, images, sounds and other content that is streamed or otherwise transmitted or provided by, or on behalf of, the Client to Granicus. Content is the property of Client.
- G. Contractor Data Libraries shall mean information, which may or may not be publicly available, that is selected, gathered and assembled by the Contractor into compilations in various forms and formats for use with the system components of the licensed application.
- H. Deliverable shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined in Paragraph 2., Scope of Work.
- I. Emergency Support shall be defined as technical support provided by the Contractor outside of normal support hours for any problem or issue that is impacting the City's ability to conduct business and cannot wait until the next business day to resolve.

- J. Know How shall mean all technical information, data and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.
- K. Intellectual Property shall mean any and all proprietary information developed pursuant to the terms of this Agreement.
- L. PA-DSS shall mean Payment Application Data Security Standard which provides a framework for software vendors to develop secure payment applications
- M. Payment Invoice shall mean a detailed, certified and written request for payment of services rendered by the Contractor to the City. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the invoice is submitted.
- N. PCI shall mean Payment Card Industry.
- O. Project shall mean a process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project approval is given by the City Project Manager and verified by the City CIO. Under the terms of this Agreement the Project is defined within Paragraph 2, Scope of Work.
- P. Project Manager shall mean a qualified person from the City responsible for all aspects of the Project. Under the terms of this Agreement, the City Project Manager shall be Clifford Thomas (Cliff) or designated representative.
- Q. Required Element shall mean any element of the Specification, whether identified as "Mandatory", "Alternate", or "Optional".
- R. Software shall mean any software, use of software or other products, including the licensed application, delivered or utilized in conjunction with the licensed application under this Agreement.
- S. Subscription shall mean the annual fee for license renewal and maintenance of an operational Live Meeting Management including maintenance and technical support services.

2. Scope of Work

- A. The Contractor shall perform the following work:

The contractor will install, configure, train, license, support, and maintain the Contractor's Live Meeting Management system for the upgrade and or replacement of the current City's Live Meeting Management system as specified in the solicitation.

This scope of work includes:

1) Project Initiation (Kick-off)

The Contractor will perform a Project Initiation meeting thirty (30) calendar days prior to the start of the Live Meeting Management system installation, implementation and integration of upgrade either through an audio-video conference call or an on-site meeting with the City. Prior to the call or meeting, the Contractor will forward, via email, the Contractor's Live Meeting Management system installation, implementation and integration guide that details the Live Meeting Management system installation,

implementation and integration process and steps including, but not limited to those process and steps associated with the configuration, testing, and product/system acceptance that will be completed during the project. The key tasks include:

- Formally transition and introduce the project team and their respective responsibilities.
- Define the success criteria of the City to meet expectations and achieve appropriate outcomes and the metrics in which these will be measured.
- Discuss potential risks/issues based upon the City's and the Contractor's experience.
- Review the Contractor's Live Meeting Management system installation, implementation and integration guide that outlines the Live Meeting Management system installation, implementation and integration process and steps.
- Establish the project schedule including, but not limited to:
 - Milestones
 - Dependencies
 - Contingencies
 - Resources
 - Durations

This schedule will be created by the Contractor and maintained by the City's Project Manager in coordination with the Contractor's and City's project teams.

- Define the project Communications Plan covering methods used to gather and store information; limits, if any, on who may give direction and to whom; reporting relationships; list of contact information; schedule for distribution of information; weekly status meetings; and a method to update the communications plan as the project progresses.

B. Services will be performed at the City of Wichita Data Center and Council Chambers, located at 455 N. Main Wichita, Kansas 67202.

C. Deliverable(s)

Granicus Open Platform – August 2014 - \$1,080 per month

- API/SDK Support License
- Granicus MediaManager Enterprise
- Granicus App Platform Access License
- Streaming Architecture Services
- Granicus iLegislate App
- Unlimited Content and Indefinite Retention Content Licensing

Granicus Government Transparency Suite – August 2014 - \$850 per month

- Granicus LiveManager Application
- Granicus Encoding Appliance Software Services
- Granicus Viewership Analytics Reports
- Granicus View Page and Player Templates

Granicus Meeting Efficiency Suite – August 2014 – \$700 per month

- MinutesMaker Workflow Service for LiveManager
- Minutes Document Template

Granicus VoteCast Add On for Meeting Efficiency – August 2014 – \$1,150 per month

- Granicus VoteCast Touch (10 Stations)
- Granicus Public Display Service

Granicus Performance Accelerator – August, 2014 - \$320 per month

- Granicus StreamReplicator Service
- Granicus MediaVault Service

D. Contractor Reimbursable Expenses

Reimbursable expenses include coach class air fare, airport parking, economy class vehicle rental, cab, or public transportation, parking and tolls, fuel, reasonable lodging and meals, excluding alcohol, and other travel incidentals required to fulfill the Agreement. The Contractor shall provide the City with an estimate of reimbursable expenses for approval prior to any scheduled travel. Upon completion or execution of the prior-approved travel, the Contractor shall submit an invoice to the City CIO for actual expenditures incurred and shall attach receipts to the invoice requesting reimbursement, as backup for accounting purposes. In no event shall Contractor Reimbursable Expenses exceed a total cost of \$2,000.00

E. Application License

Contractor hereby grants the City a non-exclusive, revocable, royalty free license to use, the Granicus Live Meeting Management system and any and all upgrades / updates, bug fixes / corrections and revisions which may occur during the term of the contract.

Granicus agrees to provide Client with a revocable, non-transferable and non-exclusive license to access the Granicus Software listed in the system or solution descriptions and a revocable, non-sub-licensable, non-transferable and non-exclusive right to use the Granicus Software. All Granicus Software is proprietary to Granicus and protected by intellectual property laws and international intellectual property treaties. Pursuant to this Agreement, Client may use the Granicus Software to perform its own work and work of its customers/constituents. Cancellation of the Client's Managed Services will also result in the immediate termination of the Client's Software license

Configuration or customization of the application made according to the City's requirements, upon mutual agreement of the parties, will be performed by the Contractor. Ongoing maintenance of these configurations or customizations will be provided by the Contractor to maintain continued compatibility with the Live Meeting Management system as upgrades / updates, bug fixes / corrections, or revisions occur to the application.

The Contractor will own in its entirety such configuration development and the intellectual property related to the Contractor's application; however the City shall have a non-exclusive, revocable, royalty free license to use such works from the date that such work is completed and released to the City.

The City shall own all right, title, and interest to all City Data entered into the licensed application by any user who is or has been authorized and licensed to use the application. The Contractor shall own all right, title, and interest in any Anonymous Data. Upon request, the Contractor shall provide copies of the Anonymous Data to the City

All archival and backup copies of the application are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

A Live Meeting Management system three (3) Year License, Support, and Maintenance Subscription may be renewed annually as set forth in Paragraph 2. C. Users are defined as City employees or partners and vendors that work with the City. Each license includes full use of the Live Meeting Management system.

F. Restrictions on Application Use

The City shall not, directly or by permitting any third party to: 1) disassemble, reverse engineer, decompile, or otherwise attempt to derive source code from the licensed application; 2) modify, adapt, create derivative works based upon, or translate the licensed application or any portion thereof; 3) resell, distribute, or otherwise grant any rights in licensed application or any portion thereof to any third party, including commercial time-sharing, rental, or service bureau use, or use the licensed application for the benefit of any third party; 4) access the licensed application or any portion thereof other than in connection with the City's internal use; or 5) publish or participate with any third party in any performance or benchmark tests or analysis relating to the licensed application or any portion thereof. A portion of the licensed application may be comprised of Contractor Data Libraries. The City acknowledges and agrees that the Contractor Data Libraries are original works of authorship created, developed and maintained by Contractor at great expense and that, in addition to being subject to the foregoing restrictions 1) through 5) and applicable copyright laws, are confidential information of the Contractor that may only be used by the City for its internal use in conjunction with the use of the application components of the licensed application on the terms set forth in this Agreement.

G. Progress/Status/Risk/Issue Meetings

Progress/Status/Risk/Issue meetings shall be scheduled, at least, bi-weekly throughout the project unless agreed to in advance by all parties to be rescheduled. Attendance by the Contractor and the City is required unless otherwise indicated. These meetings shall include:

- Progress Updates
- Milestones Achieved
- Milestones Missed
- Future Milestones
- Dependencies
- Issues
- Risks
- Project Communications
- Actions Review

H. Schedule

Agreement # _____

The due dates of the deliverable(s) or otherwise, as set forth in Paragraph 2. C., shall not be altered or waived by the City without prior written approval, through the Change Management process, as defined in Paragraph 15.

3. Compensation

A. Compensation Schedule

The City shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Paragraph 2. C.

B. Payment

The City shall pay to the Contractor for services satisfactorily performed based upon deliverables, milestones, and budget, with such compensation not to exceed One Hundred and Seventy Thousand Three Hundred and Sixty Five Dollars (\$170,365.00). The City's tax levied on the amounts payable under this Agreement totaling Zero Dollars and Zero Cents (\$0.00) as the City of Wichita, Kansas is tax exempt from this purchase pursuant to Kansas Department of Revenue Sales and Use Tax Entity Exemption Certificate #KS6661U1HW. The total amount payable to the Contractor under this Agreement, including tax and expenses, shall not exceed [\$170,365.00]. This amount is a maximum and not a guarantee that the work assigned to Contractor to be performed under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

Payment shall be made upon Acceptance of each Deliverable and upon the receipt and acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. Payment shall be tendered to the Contractor within thirty (30) days of the date of written Certification of Acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. The City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein. All Payment Invoices MUST BE received by the City no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

Consumer Price Index (CPI)

Agreement prices for hardware, software, and/or service will remain firm through end of the Agreement Term pursuant to Paragraph 6.

Contractors must request price adjustments, in writing, 30 calendar days prior to the renewal or termination date of the Agreement. If a contractor fails to request a price adjustment, no price adjustment request will be permitted until 30 calendar days prior to the next or following renewal or termination date of the Agreement. No retroactive contract price adjustments will be allowed.

The Contractor shall provide the City CIO clear and convincing evidence, satisfactory to the City, that all of the following conditions exist:

- 1) The increase is the result of increased costs outside the Contractor's control and not cost under the Contractor's control, and that;

Agreement # _____

- 2) The increase will not produce a higher profit margin for the Contractor than that on the original contract.

Price adjustments will be made in accordance with the percentage change in the U.S. Department of Labor Consumer Price Index (CPI-U) for All Urban Consumers, All Items, and Wichita area.

The price adjustment rate will be determined by comparing the percentage difference between the CPI in effect for the base year six month average (January through June OR July through December 2014; and each (January through June OR July through December 2017 six month average) thereafter. The percentage difference between those two CPI issues will be the price adjustment rate.

3. Taxes

Use and local sales tax on the purchase of software and services are the sole responsibility of the City unless Contractor has agreed to collect and pay use tax on behalf of the City. In any event City is responsible for any use tax.

Other than use tax, the payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification numbers.

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4. Acceptance

A. Submission

Upon completion of agreed upon Deliverables as set forth in Paragraph 2. C., Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the City Project Manager. Each Payment Invoice shall be for the fixed Deliverable price as set forth in Paragraph 2. C.

B. Acceptance

The City CIO in conjunction with the City Project Manager shall determine if the Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been accepted, in writing, by the City CIO. In order to accept the Deliverable, the City CIO, in conjunction with the City Project Manager, will assess the Deliverable and determine, at a minimum, that the Deliverable:

- 1) Complies with the Scope of Work as set forth in Paragraph 2;
- 2) Complies with the terms and conditions of the City's solicitation;
- 3) Complies with the Deliverable requirements as set forth in Paragraph 2.C.;
- 4) Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
- 5) Complies with all the requirements of this Agreement.

If the Deliverable is deemed Acceptable by the City CIO, in conjunction with the City Project Manager, the City CIO will notify the Contractor of Acceptance, in writing, within fifteen (15) business days from the date the City Project Manager receives the Deliverable(s) and accompanying Payment Invoice.

C. Rejection

Unless the City CIO gives notice of rejection within the fifteen (15) business day Acceptance period, the Deliverable will be deemed to have been accepted. If the Deliverable is deemed unacceptable, fifteen (15) days from the date the City Project Manager receives the Deliverable(s) and accompanying Payment Invoice, the City Project Manager will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have fifteen (15) business days to resubmit the Deliverable to the City Project Manager with all appropriate corrections or modifications made and/or addressed. The City CIO, in conjunction with the City Project Manager, will again determine whether the Deliverable(s) is Acceptable under and provide a written determination within fifteen (15) business days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the City CIO. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall be deemed as in breach of this Agreement. The City may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the City may terminate this Agreement.

5. Term

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY ALL PARTIES. This Agreement shall terminate on **August 1, 2017**, unless terminated pursuant to Paragraph 7. No contract term, including extensions and renewals, shall exceed five years.

6. Termination

This Agreement may be terminated as follows:

A. General

After an initial one (1) year period, By either Party upon written notice to be delivered to the other party not less than sixty (60) calendar days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crimes due to misuse of state funds or due to the Appropriations paragraph herein.

B. Right to Cure

- 1) As to the Contractor, the Notice of Termination shall include a description of the nonconformance or nonperformance by the Contractor. The Notice of Termination may include a period of fifteen (15) calendar days from date of Notice of Termination, for the Contractor to respond to the City to address the nonconformance or nonperformance of the Agreement that includes a Correction Plan and a Schedule for implementation of the Correction Plan. If the proposed Correction Plan and Schedule is acceptable to the City, the City shall notify the Contractor and the Notice of Termination shall be on hold pending satisfactory completion of the correction plan. If the Correction Plan and schedule are not met, the City shall re-issue the Notice of Termination.
- 2) As to the City, the Notice of Termination shall include a description of the nonconformance or nonperformance by the City. The Notice of Termination may include a period of fifteen (15) calendar days from date of Notice of Termination, for the City to respond to the Contractor to address the nonconformance or nonperformance of the Agreement that includes a Correction Plan and a Schedule for implementation of the Correction Plan. If the proposed Correction Plan and Schedule is acceptable to the Contractor, the Contractor shall notify the City and the Notice of Termination shall be on hold pending satisfactory completion of the correction plan. If the Correction Plan and schedule are not met, the Contractor shall re-issue the Notice of Termination.

C. Appropriations

By the City, if required by changes in city, state or federal law, or because of court order, or because of insufficient appropriations for the performance of this Agreement, the City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City terminates this Agreement pursuant to this subsection, the City shall provide the Contractor written notice of such termination at least ninety (90) calendar days prior to the effective date of the termination.

D. Obligations and Waiver

By termination pursuant to this Paragraph, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THIS PARAGRAPH IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE CITY CAUSED BY THE CONTRACTOR'S DEFAULT OR BREACH OF THIS AGREEMENT.

7. Termination Management

A. Contractor

In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:

- 1) Transfer, deliver, and/or make readily available to the City property in which the City has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the City.
- 2) Incur no further financial obligations for materials, services, or facilities under the Agreement without prior written approval of the City;
- 3) Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the City may direct, for orderly completion and transition;
- 4) Take such action for the protection and preservation of all property and all records related to and required by this Agreement;
- 5) Agree that the City is not liable for any costs arising out of termination and that the City is liable only for the costs of Deliverables Accepted prior to the termination of the Agreement;
- 6) Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of City programs;
- 7) In the event this Agreement is terminated for any reason or prior to term expiration, the Contractor shall, within five (5) business days of receiving or sending the notice of termination or sixty (60) business days prior to the term expiration date, provide to the City CIO at no additional cost a system/software transition plan that includes a transition schedule, transition tasks and activities, resource requirements, acceptance criteria, management controls, risks and contingencies, transition team information, and a transition impact statement (to include, but not limited to, performance requirements, system availability, security requirements, expected response times, system backups, expected transaction rates, initial storage requirements with expected growth rate, as well as help desk support requirements).
- 8) Termination options regarding Content are as follows:

In case of termination by Client or expiration of the Service Agreement, Granicus and the Client shall work together to provide the Client with a copy of its Content. The Client shall have the option to choose one (1) of the following methods to obtain a copy of its Content:

Agreement # _____

- Option 1: Video/Audio files made available through optional media: data CD, external hard drive, or Granicus provided FTP site. A CSV, XML, and/or database file will be included providing clip information, and/or legislative content.
- Option 2: Provide the Content via download from MediaManager or from a special site created by Granicus. This option shall be provided free of charge.
- Option 3: Granicus shall provide the means to pull the content using the Granicus Application Programming Interface. This option shall be provided free of charge.

B. The Client and Granicus shall work together and make their best efforts to transfer the Content within the sixty (60) day termination period. Granicus has the right to delete Content from its services after sixty (60) days

C. City

In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the City shall:

- 1) Pay the Contractor all amounts due for services Accepted prior to the effective date of such termination or expiration.

8. Indemnification

Contractor shall save and hold the City harmless against all suits, claims, damages and losses for injuries to persons or property or for liability arising from or caused by errors, omissions, negligent or intentional acts of the Contractor, its officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.

9. Intellectual Property Indemnification

A. Intellectual Property Indemnification

The Contractor shall defend, at its own expense, the City, and/or any other body against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall pay all costs, damages and attorney's fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the City based upon Contractor's trade secret infringement relating to any product or services provided under this Agreement, the Contractor agrees to reimburse the City for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the City shall:

- 1) Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
- 2) Allow the Contractor to control the defense and settlement of the claim; and
- 3) Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

B. City Rights

If any product or service becomes, or in the Contractor's opinion is likely to become, the subject of a claim of infringement, the Contractor shall, at its sole expense:

Agreement # _____

- 1) Provide the City the right to continue using the product or service and fully indemnify the City against all claims that may arise out of the City's use of the product or service;
- 2) Replace or modify the product or service so that it becomes non-infringing; or
- 3) Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the City to the extent such modification is the cause of the claim.

10. Warranties

A. Software

The Contractor warrants that any software or other products, including the licensed application, delivered under this Agreement shall comply with the terms of this Agreement, Contractor's official published specification(s) and technical specifications of this Agreement and all generally accepted industry standards. The Contractor further warrants that the software or other products, including the licensed application, provided under this Agreement will meet the applicable specifications for two (2) years after Acceptance by the City CIO and implementation by the City. If the software or other products, including the licensed application, fails to meet the applicable specifications during the warranty period, the Contractor will correct the deficiencies, at no additional cost to the City, so that the software or other products, including the licensed application, meets the applicable specifications.

11. Contractor Personnel

A. Key Personnel

Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the City. Key personnel are those individuals considered by the City to be mandatory to the work to be performed under this Agreement. Key Contractor personnel shall be:

- Granicus Project Manager – Alvaro Marroquin
- Granicus Client Manager – Christopher Voorhees
- Granicus Resource Coordinator – Sanchit Chhabra
- Granicus Product Trainer – Rebecca Shoffstall

B. Personnel Changes

Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the City. For all personnel, the City reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) calendar days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to City approval. The City, in its sole discretion, may approve additional time beyond the ten (10) calendar days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the project. The Contractor shall also make interim arrangements to assure that the project progress is not affected by the loss of personnel. The City reserves the right to require a

Agreement # _____

change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the City, meeting the City's expectations.

12. Status of Contractor

A. Independent Contractor

The Contractor and its agents and employees are independent contractors performing services for the City and are not employees of the City. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax. The Contractor agrees not to purport to bind the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

B. Subject of Proceedings

Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the City.

13. Change Management

A. Changes

The Contractor and/or the City may request changes or revisions to the Scope of Work or Project Tasks as defined in Paragraph 2 in accordance with the "Change Request Process", Paragraph 15. B. described herein.

B. Change Request Process

In the event that circumstances warrant a change to accomplish the Scope of Work or Project Tasks as defined in Paragraph 2, a Change Request shall be submitted that includes the following:

The name of the person requesting the change, a summary of the required change, the start date for the change, the reason and necessity for change, the urgency level for the change, the elements to be altered, the impact of the change, the staffing plan associated with the change, the impact on the schedule for implementing the change, the cost impact, the risk assessment and a recommended approach to the change.

C. Change Request Approval

1) City

The City shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) business days of receipt of the Change Request.

2) Contractor

The Contractor shall provide a written decision on the Change Request to the City within a maximum of ten (10) business days of receipt of the Change Request.

The City CIO, upon a Change Request approval, shall formally amend the original Agreement. The Change Request shall then be bound by the Terms and Conditions of the original Agreement.

16. **Professional Services Certification**

Contractor certifies that at the time of the issuance of this Agreement, the Contractor does not serve as an expert witness for any litigation against the City, and that it will not serve as an expert witness for any litigation against the City during the term of this Agreement.

17. **Default/Breach**

14. **Equitable Remedies**

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the City irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the City, and the Contractor consents to the City's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. City's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that City may have under applicable law, including, but not limited to, monetary damages.

18. **Liability**

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property before or after Acceptance, delivery, installation and use of the equipment, either at the Contractor's site or the City's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor or defect of the equipment or installation. Contractor shall not be liable for damages arising out of, or caused by, alterations to the equipment (other than alterations performed or caused by Contractor's officers, employees or agents) made by the City or for losses occasioned by the City's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and employees of the City, or any remedy that may exist under law or equity in the event a defect in the manufacture of, or the negligent acts or omissions of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

15. **Assignment**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

16. **Subcontracting**

The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the City. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the City.

17. **Release**

The Contractor's acceptance of final payment of the amount due under this Agreement shall

Agreement # _____

operate as a release of the City, its officers, employees and agents from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

18. Confidentiality

Any confidential information provided to the contractor by the City or, developed by the Contractor based on information provided by the City in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City. Upon termination of this Agreement, Contractor shall deliver all confidential material in its possession to the City within thirty (30) calendar days of such termination. Contractor acknowledges that failure to deliver such confidential information to the City will result in direct, special and incidental damages.

19. Conflict of Interest

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

19. Records and Audit

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City or designated representative. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

20. Amendment

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities.

21. Merger, Scope, Order of Precedence

A. Severable

The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or City or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.

B. Merger/Scope/Order

This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement.

22. Non-Discrimination

The Contractor shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements incorporated herein by reference.

23. Workers Compensation

The Contractor agrees to comply with all federal, state, and city laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

24. Applicable Law and Venue

This contract shall be subject to, governed by, and construed according to the laws of the City and the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in Sedgwick County, Kansas.

25. Waiver

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

26. Headings

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

20. Survival

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements and other unexpired agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement.

21. Calculation of Time

Any time period herein calculated by reference to "days" means calendar days, unless specifically stated otherwise; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the City, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

22. Force Majeure

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

23. Notices

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by overnight carrier or upon telephone confirmation by Contractor to the sender of receipt of a facsimile communication or e-mail that is followed by a mailed hard copy from the sender.

Agreement # _____

Notices shall be addressed as follows:

To the City: City of Wichita
 455 N Main
 Wichita, KS 67202
 Attn: Karen Fry
 Phone: (316) 303-8112
 kfry@wichita.gov

To the Contractor: Granicus, Inc.
 600 Harrison Street, Suite 120
 San Francisco, CA 94107
 Attn: Christopher Voorhees
 Phone: 415 357 3618 x 1166
 chrisv@graniccus.com

Any change to the Notice individual or the address, shall be effective only in writing.

24. Authority

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract and that the Contractor agrees to be bound by the provisions thereof.

25. No Arbitration

The Contractor and the City shall not be obligated to resolve any claim or dispute related to the contract by arbitration. Any reference to arbitration in prior discussions or documents is deemed void.

Agreement # _____

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the required approval authorities below.

City of Wichita

Carl Brewer, Mayor

Date: _____

Attest:

Karen Sublett, City Clerk

Date: _____

Approved as to form:

Gary E. Rebenstorf, City Attorney

Date: _____

Granicus, Inc.


Thomas Spengler, Chief Executive Officer

Date: 6-5-14

This is a placeholder document for the report "Agenda Report No. II-9". There was an error in the publishing process and it could not be converted to PDF.

RESOLUTION NO. 14-165

A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION NO. 09-348 OF THE CITY OF WICHITA, KANSAS WHICH DECLARED IT NECESSARY TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY, TO ISSUE REVENUE BONDS FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH INTENTION IN THE MANNER REQUIRED BY LAW.

WHEREAS, the City of Wichita, Kansas (the “City”) is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, the City Council of the City (the “Governing Body”), has heretofore by Ordinance No. 39-888, passed May 26, 1987 and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the City of Wichita, Kansas Water and Sewer Utility (the “Utility”); and

WHEREAS, the City is authorized under the Constitution and laws of the State of Kansas, including K.S.A. 10-1201 *et seq.*, as amended and supplemented by Charter Ordinance No. 211 of the City (collectively, the “Act”), to issue revenue bonds to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility;

WHEREAS, the Governing Body has heretofore by Resolution No. 09-348 of the City (the “Prior Resolution”), found and determined that it is necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility in the following manner:

Wholesale Water Agreement with Rural Water District #1 of Sedgwick County (W-018)

(the “Project”) at an estimated cost, including related design and engineering expenses of **\$600,000**; and

WHEREAS, the Prior Resolution also determined to be necessary and advisable to issue revenue bonds of the City under the authority of the Act, in an aggregate principal amount not to exceed **\$600,000** in order to pay all or a portion of the costs of the Project and related reserves, interest on financing and administrative and financing costs (the “Bonds”) to be payable from the revenues of the Utility; and

WHEREAS, bids have exceeded available KDHE funding and the **scope and cost of the Project has expanded and it therefore necessary to amend the Prior Resolution.**

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. Amendment. *Section 1 and Section 3* of the Prior Resolution are hereby amended to read as follows:

Section 1. Project Authorization. It is hereby determined that it is necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility in the following manner:

Wholesale Water Agreement with Rural Water District #1 of Sedgwick County (W-018)

(the “Amended Project”) at an estimated cost, including related design and engineering expenses of **\$850,000**. It is hereby further authorized, ordered and directed that the Amended Project be acquired, constructed and/or installed in accordance with plans and specifications therefor prepared under the direction of the City Engineer or designate and approved by the Governing Body; said plans and specifications to be placed on file in the offices of the Utility. The Amended Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

Section 3. Project Financing. In order to pay all or a portion of the costs of the Amended Project and related reserves, interest on financing and administrative and financing costs, it is hereby found and determined to be necessary and advisable to issue revenue bonds of the City under the authority of the Act, in an aggregate principal amount not to exceed **\$918,000** (the “Bonds”). The Bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Amended Project in excess of the proceeds of the Bonds, if any, shall be paid from unencumbered moneys of the Utility which will be available for that purpose. The Bonds may be issued to reimburse expenditures authorized by the Prior Resolution made on or after the date which was 60 days before the date of adoption of the Prior Resolution and to reimburse additional expenditures authorized by this Resolution, which were made 60 days before the date of adoption of this Resolution, all pursuant to Treasury Regulation §1.150-2.

Section 2. Notice. Before issuing the Bonds authorized herein, there shall be published one (1) time in the official newspaper of the City, a notice of the intention of the Governing Body to undertake the Amended Project and to issue the Bonds (the “Notice”); and if within fifteen (15) days after the publication of such Notice, there shall be filed with the City Clerk, a written protest against the Amended Project or the issuance of the Bonds, signed by not less than twenty per cent (20%) of the qualified electors of the City, the Governing Body shall thereupon submit such proposed Amended Project and the Bonds to the electors of the City at a special election to be called for that purpose as provided by the Act. If no sufficient protest is filed with the City Clerk within the period of time hereinbefore stated, then the Governing Body shall have the authority to proceed with the Amended Project and issuance of the Bonds.

Section 3. Repealer; Ratification. In the event no sufficient protest petition is filed in accordance with the Act against the Amended Project and the Bonds as set forth in **Section 2** hereof, **Sections 1 and 2** of the Prior Resolution are hereby repealed; and the rest and remainder thereof is hereby ratified and confirmed. If a protest petition is filed and/or if a required referendum does not approve the Amended Project and the Bonds, the Prior Resolution remains in full force and effect with respect to the Project and the Bonds authorized therein.

Section 4. Effective Date. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

ADOPTED by the City Council of the City of Wichita, Kansas, by not less than two-thirds of the members voting in favor thereof, on **June 17, 2014**.

(SEAL)

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

(Published in *The Wichita Eagle*, on June 20, 2014.)

NOTICE

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You are hereby notified that the City Council (the “Governing Body”) of the City of Wichita, Kansas (the “City”), adopted Resolution No. __-__, on June 17, 2014 (the “Resolution”). The Resolution amended Resolution No. 09-348 (the “Prior Resolution”) which found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility (the “Project”), which is owned and operated by the City (the “Utility”), and authorized the issuance of revenue bonds in amount not to exceed \$600,000 in order to finance all or a portion of the costs of the Project and related reserves, interest on financing and administrative and financing costs. The Resolution modified the scope of the Project to include change in location; extension of utility services; and construction of a fence and to include additional funding authority for increased costs to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility in the following manner:

Wholesale Water Agreement with Rural Water District #1 of Sedgwick County (W-018)

(the “Amended Project”) at an estimated cost, including related design and engineering expenses of \$850,000, and declared the intention to issue revenue bonds an aggregate principal amount not to exceed \$918,000 under the authority of K.S.A. 10-1201 *et seq.*, as amended and supplemented by Charter Ordinance No. 211 of the City (the “Bonds”) in order to finance all or a portion of the costs of the Amended Project and related reserves, interest on financing and administrative and financing costs.

The Bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of the Bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose.

This Notice shall be published one time in the official newspaper of the City; and if, within fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Amended Project and the issuance of the Bonds, which protest is signed by not less than twenty percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the Bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Amended Project and the issuance of the Bonds is filed within said period, then the Governing Body shall have the authority to proceed with the Amended Project and issuance of the Bonds.

BY ORDER of the Governing Body of the City of Wichita, Kansas, on _____.

/s/ CARL BREWER, Mayor

ATTEST:

/s/ Karen Sublett, City Clerk

City of Wichita
City Council Meeting
June 17, 2014

TO: Mayor and City Council

SUBJECT: Removal of Sidewalk Repair Special Property Tax Assessment on 1357 South Broadway (District III)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Authorize removal of the City of Wichita sidewalk repair special property tax assessment on 1357 South Broadway and place the amending ordinance on first reading.

Background: The Department of Public Works & Utilities supports right-of-way code enforcement through sidewalk repair under Title 10 of the City Code. State law and City policy allow the City to repair sidewalks on the right-of-way abutting properties that have trip hazards after proper notification to responsible parties. The City's contractor performs the work and the Engineering Division bills the cost of the repair to property owners. State law allows placement of billed but unpaid costs as special property tax assessments after City Council approval.

Analysis: On April 15, 2014, the City Council approved special property tax assessments of unpaid sidewalk repair bills for multiple properties, including a \$161 assessment for 1357 South Broadway. Upon receipt of the bill, the property owner appealed the special assessment on the basis that the repair work had not been completed. A property inspection determined that the property owner had leveled the sidewalk and the City's contractor had not performed any repair work at this address. Staff requests the City Council authorize the City's Debt Coordinator to remove the special property tax assessment on 1357 South Broadway.

Financial Considerations: The contractor will not be compensated since no work was performed at this address, thus there is no cost to the City associated with the approval of removing the special property tax assessment.

Legal Considerations: The Law Department has reviewed and approved the recommendation and amending ordinance as to form.

Recommendation/Action: It is recommended that the City Council approve the removal of the \$161 sidewalk repair special property tax assessment for the property at 1357 South Broadway, place the amending ordinance on first reading, and authorize the necessary signatures.

Attachments: Amending ordinance.

NOTICE OF CORRECTION OF
ORDINANCE NO. 49-684

ORDINANCE NO 49-768

Published In The Wichita Eagle on **April 25, 2014**
Corrected and Republished on June 27, 2014

The publication on April 25, 2014 of Ordinance No. 49-684 of the City of Wichita, Kansas regarding the ordinance making a special assessment to pay for the improvement cost of \$161.00 contained an error in section 1. Section 1 should have read as follows:

SECTION 1. That the sum set opposite each of the following lots, pieces, tracts and parcels of land or ground herein specified, be and the same are hereby levied to pay the cost of construction of sidewalks abutting the same:

Legal of Parcel in Benefit District	Assessment
LOTS 2-4 ON MARKET ST. & LOTS 1-3 ON LAWRENCE AVE. GOODWIN'S ADD.	1808.56
LOTS 21-23 LAWRENCE AVE. PARKHURST'S ADD.	843.76
LOTS 29, 35, 37 EXC S 12.5 FT, LOT 37, LAWRENCE AVE PARKHURST'S ADD	1327.28
LOTS 1-2-3 LAWRENCE AVE. HOENSCHIEDT ADD.	353.40
LOTS 7-8 LAWRENCE AVE. PAULLINE'S ADD.	2409.75
LOTS 11-12 LAWRENCE AVE. PAULLINE'S ADD.	587.90
LOTS 13-14 & N 9.52 FT LOT 15 LAWRENCE NOW BROADWAY PAULLINE'S ADD.	259.80
S 10.48 FT LOT 19-ALL LOTS 20-21 BROADWAY AVE. PAULLINE'S ADD.	173.75
S 64 FT W 1/2 LOT 8 EXC W 12.5 FT DED FOR ST ZIMMERLY'S ADDITION	294.00
LOT 7 LAWRENCE AVE. LINCOLN PARK ADD.	259.28
LOT 9 LAWRENCE AVE. LINCOLN PARK ADD.	688.00
LOTS 49-51 LAURA AVE. LINCOLN ST. ADD.	261.36
LOTS 53-55 LAURA AVE. LINCOLN ST. ADD.	498.48
LOTS 65-67 LAURA AVE. LINCOLN ST. ADD.	161.52
LOTS 69-71 LAURA AVE. LINCOLN ST. ADD.	165.80
LOTS 73-75 LAURA AVE. LINCOLN ST. ADD.	49.92
LOTS 77-79-81 LAURA AVE. LINCOLN ST. ADD.	429.84
LOTS 93-95 LAURA AVE. LINCOLN ST. ADD.	321.68
LOTS 58-60 LAURA AVE. LINCOLN ST. ADD.	238.48
LOTS 62-64 LAURA AVE. LINCOLN ST. ADD.	581.68
LOTS 66-68 LAURA AVE. LINCOLN ST. ADD.	448.88
LOT 74 & N 8 1/3 FT LOT 76 LAURA AVE. LINCOLN ST. ADD.	409.04
S 16 2/3 FT LOT 76 & N 16 2/3 FT LOT 78 LAURA AVE. LINCOLN ST. ADD.	384.08

S 8 1/3 FT LOT 78-ALL LOT 80 LAURA AVE. LINCOLN ST. ADD.	415.28
--	--------

Page 2 of Ordinance No. **49-684**

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

Approved as to form:

Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
June 17, 2014

TO: Mayor and City Council

SUBJECT: Change of Trustee (UMB Bank to Security Bank)

INITIATED BY: Office of Urban Development

AGENDA: Consent

Recommendation: Adopt the Resolution.

Background: On April 24, 2014 the City of Wichita received notice that Security Bank of Kansas City was purchasing a substantial portion of UMB's Corporate Trust Business. Pursuant to the Indentures, the tenant companies are requesting the City of Wichita's approval of a change of trustee bank from UMB Bank, N.A., of Kansas City, Missouri to Security Bank of Kansas City of Kansas City, Kansas as successor trustee.

Analysis: The tenants of the Industrial Revenue Bonds issues listed below are requesting the change of trustee for its issues listed by the tenants' name. They have requested the change of trustee bank, pursuant to provisions of the bond indenture, which allows the tenants to initiate the change with concurrence of the issuer. The successor trustee, representing that it is qualified to accept such trust under the indenture, has filed with the issuer and the tenants of its written acceptance of the appointment as successor trustee and has accepted the duties and responsibilities of the trustee under the indenture. The following IRB series are being acquired by Security Bank of Kansas City from UMB Bank for trust services.

American Baptist Estates - Series I, 2005
American Baptist Estates - Series IX, 2012
American Luxury Cinema – Series II, 2010
Buttonwood Tree Apartment – Series I, 2002
Capps Manufacturing - Series I A, 2007
Didcot L.C. – Series VII, 2003
Envision – Series V, 2006
Old Town Lodging – Series VI A & B, 2006
Pulse Headquarters - Series VIII 2011
YMCA – Series I, 2011

Financial Considerations: There is no financial impact to the City.

Legal Considerations: The Resolution has been reviewed by the Law Department and approved as to form.

Recommendations/Actions: It is recommended that the City Council adopt the Resolution removing UMB Bank as trustee and appointing Security Bank of Kansas City as successor trustee, and authorize the necessary signatures.

Attachments: Resolution, Corporate Trust Letter Didcot L.C.

RESOLUTION NO. 14-166

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS ACKNOWLEDGING THE REMOVAL OF THE TRUSTEE NAMED IN CERTAIN TRUST INDENTURES BETWEEN THE CITY AND SAID TRUSTEE RELATING TO THE CITY'S TAXABLE AND TAX-EXEMPT INDUSTRIAL REVENUE BONDS, SERIES LISTED BELOW, AND APPOINTING SECURITY BANK OF KANSAS CITY, KANSAS CITY, KANSAS AS SUCCESSOR TRUSTEE.

WHEREAS, in connection with the issuance by the City of Wichita, Kansas (the "City" or "Issuer") of its Taxable AND Tax-Exempt Industrial Revenue Bonds, for the following Series:

<u>Series:</u>	<u>Tenant:</u>
Series I, 2005	(American Baptist Estates)
Series IX, 2012	(American Baptist Estates)
Series II, 2010	(American Luxury Cinemas)
Series I, 2002	(Buttonwood Tree Apartments)
Series I A, 2007	(Capps Manufacturing)
Series VII, 2003	(Didcot L.C.)
Series V, 2006	(Envision)
Series VI A & B, 2006	(Old Town Lodging)
Series VIII 2011	(Pulse Headquarters)
Series I, 2011	(YMCA)

Collectively referred to as the "Bonds," the Issuer entered into certain Trust Indentures (the "Indenture") between the Issuer and UMB Bank, N.A., Wichita, Kansas as trustee (the "Original Trustee"); and

WHEREAS, in connection with the issuance of the Bonds, the "Tenant" entered into a Lease with the Issuer (the "Lease") wherein the Tenant is obligated to make rental payments sufficient to provide for payment of the principal of and interest on the Bonds; and

WHEREAS, the Original Trustee sold and transferred all or substantially all of its corporate trust business to Security Bank of Kansas City, Kansas City, Kansas (the "Current Trustee") who became the trustee under the Indenture; and

WHEREAS, the Indenture provides that, as long as no Default or Event of Default (as defined in the Indenture) shall have occurred and be continuing, the trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee, the Issuer and the Tenant and signed by the Holders of 50% in aggregate principal amount of the Bonds then Outstanding.

WHEREAS, the Issuer and the Tenants have declared their intent to remove the Original Trustee pursuant to the Indentures effective as of May 1, 2014 (the "Effective Date") and have provided written notice to the Original Trustee, the Issuer and the owners of the Bonds; such notice also requesting designation of Security Bank of Kansas City, Kansas City, Kansas as successor trustee (the "Successor Trustee"), subject to the terms of the Indenture; and

WHEREAS, the requisite owners of the Bonds have filed a consent proscribed by the Indentures and the Successor Trustee, being qualified to accept such trust under the Indentures, has filed with the Issuer and the Tenant its written acceptance of the appointment as successor trustee and has accepted the duties and responsibilities of the trustee under the Indenture as of the Effective Date; and

WHEREAS, the Issuer desires to appoint the Security Bank of Kansas City as the successor trustee.

THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS;

Section 1. The Issuer and Tenants have complied with the provisions of the Indenture in proceeding with the removal of the Current Trustee.

Section 2. The Successor Trustee is hereby appointed to serve as successor trustee under the Indenture as of the Effective Date.

Section 3. The Successor Trustee shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities, protections, and privileges of the trustee under the Indenture, Lease, Bonds and other documents entered into in connection with the Bonds. Notwithstanding the foregoing, the Current Trustee, or Mayor or Vice-Mayor of the City of Wichita, is instructed to execute and deliver an instrument transferring to the Successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities, protections, and privileges of the Current Trustee under the Indenture; and shall immediately deliver to the Successor Trustee all assets then in its possession and control as trustee under the Indenture, including but not limited to all funds on hand and deposited in the funds or accounts relating to the Bonds under the Indenture, any evidences of indebtedness representing the investment of such funds, all insurance policies and copies of all documents, accounts, books and records of any nature which have been prepared and maintained by the Current Trustee and relate to such assets and to the Bonds.

Section 4. This resolution and the appointment of the Successor Trustee as successor trustee under the Indenture shall in no way be deemed a release of the Original Trustee or Current Trustee from any damage or liability to which the Original Trustee or Current Trustee may have become subject as a result or in consequence of any act or omission while serving as trustee under the Indenture. Notwithstanding the removal of the Original Trustee, the provisions of the Indenture and other documents entered into in connection with the Bonds relating to the indemnification of the Original Trustee shall remain in effect as to the Original Trustee in addition to applying to the Successor Trustee.

ADOPTED by the governing body of the City OF Wichita, Kansas on June 17, 2014.

Carl Brewer, Mayor

(SEAL)

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM

Gary E. Rebenstorf, City Attorney



CORPORATE TRUST



April 24, 2014

Via Electronic Mail

City of Wichita, Kansas
Attn: Tim Goodpasture
Economic Development Analyst
455 N. Main
Wichita, KS 67202

tgoodpasture@wichita.gov

Didcot L.C.
Midcontinent Instrument Co.
Attn: Roni Edwards
9400 E. 34th St. N.
Wichita, Ks 67226-2615

ronie@mcico.com

Re: City of Wichita, Kansas Industrial Revenue Refunding Bonds (Didcot, L. C. Project)
Series VII, 2003 Dated November 1, 2003

Ladies and Gentlemen:

Please let this serve as official Notice that Security Bank of Kansas City entered into an Agreement with UMB Bank to purchase a portion of UMB's Corporate Trust Business out of Wichita, Kansas. This includes the servicing of your bond issue.

I am pleased to announce that your Trust Officer, Bonnie Mosher, is now employed by Security Bank of Kansas City and will continue to be your main contact.

The terms of your Bond Trust Documents require your consent and approval for Security Bank to step in as Successor Trustee. Security Bank of Kansas City services over 800 bond issues throughout the Midwest totaling more than \$3.0 billion in bonds outstanding.

I would appreciate you signing the acknowledgement and approval line at the bottom of this letter and returning it to us so that we can officially step in as Successor Trustee. As of now, we are acting as your Trustee pursuant to a Servicing Agreement between Security Bank and UMB Bank. Please fax your signature page to us at 913-279-7960. It can also be sent to via email at: bmosher@securitybankkc.com or mmclaughlin@securitybankkc.com.

If you have any questions or comments regarding this matter, please do not hesitate to contact me at 913-279-7946. Bonnie can also answer your questions at 316-765-2844.

We look forward to working with you.

Sincerely,

Matthew D. McLaughlin
Senior Vice President

By signature below, the party signing does hereby approve the transfer of Trusteeship from UMB Bank, NA to Security Bank.

Issuer Approval:

By: _____

Name: _____

Title: _____

Borrower Approval:

By: Cynthia C. Highbarger

Name: Cynthia C. Highbarger

Title: Vice President

Second Reading Ordinances for June 17, 2014 (first read on June 10, 2014)

A. Ordinance Amending Sections 3.72.010, 3.72.015, 3.72.130 and 3.72.160 and Repealing Licensing Provisions Related to Firearms Permit for Private Security Officers.

ORDINANCE NO. 49-762

AN ORDINANCE AMENDING SECTIONS 3.72.010, 3.72.015, 3.72.130 AND 3.72.160 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO PRIVATE SECURITY OFFICERS AND PRIVATE SECURITY AGENCIES WITHIN THE CITY, AND REPEALING THE ORIGINAL OF SECTIONS 3.72.005, 3.72.010, 3.72.015, 3.72.130, 3.72.160, 3.72.210, 3.72.220, 3.72.230, 3.72.240, 3.72.250, 3.72.260, 3.72.270 AND 3.72.280.

B. Ordinance Amending Sections 5.88010 and 5.88030 and Repealing Chapter 5.89 Relating to the Possession of Firearms.

ORDINANCE NO. 49-763

AN ORDINANCE AMENDING SECTIONS 5.88.010 AND 5.88.030 AND REPEALING CHAPTER 5.89 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO WEAPONS AND FIREARMS AND REPEALING THE ORIGINAL OF SAID SECTIONS.

C. Nuisance Abatement Assessments, Lot Clean Up. (Districts I, III, IV, V, And VI)

ORDINANCE NO. 49-764

AN ORDINANCE MAKING A SPECIAL ASSESSMENT TO PAY FOR THE COST OF ABATING CERTAIN PUBLIC HEALTH NUISANCES (LOT CLEAN UP) UNDER THE PROVISION OF SECTION 7.40.050 OF THE CODE OF THE CITY OF WICHITA, KANSAS. BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

D. SUB2014-00015 Plat of David and Palmer Addition located West of Broadway , on the South Side of 29th Street North. (District VI)

ORDINANCE NO. 49-765

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

City of Wichita
City Council Meeting
June 17, 2014

TO: Mayor and City Council

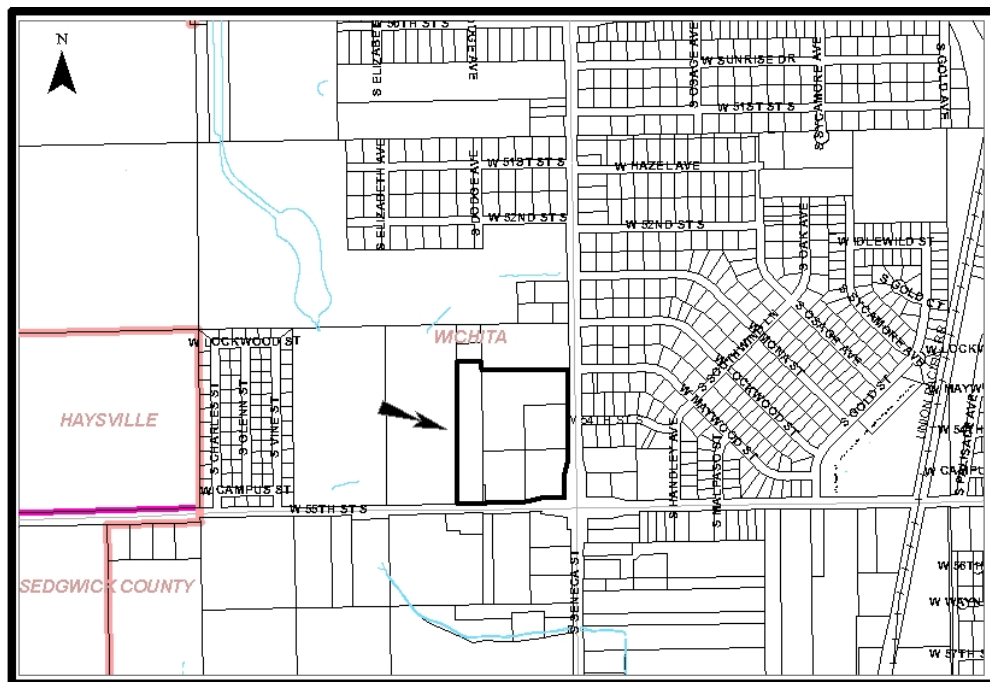
SUBJECT: SUB2013-00051 -- Plat of Southern Shores Addition located on the Northwest Corner of Seneca and 55th Street South (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (11-0)



Background: The site consists of 40 lots on 16.68 acres. A portion of the site has been approved for a zone change (ZON2012-00022) from MF-29 Multi-family Residential, LC Limited Commercial and GO General Office to TF-3 Two-family Residential. A portion of the site has been approved for a zone change (ZON2013-00018) from SF-5 Single-family Residential to TF-3 Two-family Residential. The remainder of the site is zoned LC Limited Commercial.

Analysis: The applicant has submitted 100 percent Petitions and a Certificate of Petitions for sewer, water, paving and drainage improvements. The applicant has submitted a Drive Approach Closure Certificate regarding the driveways required to be closed by access controls, which are being dedicated by the plat. The applicant has submitted a Restrictive Covenant to provide for the ownership and maintenance responsibilities of the reserves being platted.

The plat has been reviewed and approved by the Metropolitan Area Planning Commission subject to conditions.

Publication of the Ordinances should be withheld until the plat is recorded with the Register of Deeds.

Financial Considerations: There are no financial considerations associated with the plat.

Legal Considerations: The Law Department has reviewed and approved the Certificate of Petitions, Drive Approach Closure Certificate, Restrictive Covenant and Resolutions as to form and the documents will be recorded with the Register of Deeds.

The Law Department has reviewed and approved the Ordinances as to form.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat, authorize the necessary signatures, adopt the Resolutions and place the Ordinances on first reading. Publication of the Ordinances should be withheld until the plat is recorded with the Register of Deeds.

Attachments: Certificate of Petitions.
Drive Approach Closure Certificate.
Restrictive Covenant.
Ordinances.
Resolutions.

COPY

CERTIFICATE OF PETITION

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

We, Angel Fire, LLC, a Kansas limited liability company, owner of Southern Shores Addition, Wichita, Sedgwick County, Kansas, do hereby certify that petition(s) for the following improvements have been submitted to the City Council of the City of Wichita, Kansas:

1. Sanitary Sewer Improvements
2. Water Improvements
3. Paving Improvements
4. Storm Water Sewer Improvements

As a result of the above-mentioned petition(s) for improvements, all lots or portions thereof within Southern Shores Addition, may be subject to special assessments assessed thereto for the cost of constructing the above-described improvements.

Signed this 27th day of May, 2014.

Angel Fire, LLC

By: 
Michael J. Brand, Managing Member

Certificate of Petition
Page 2 of 2

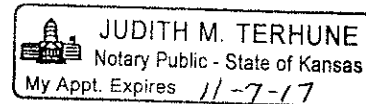
STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 27th day of May, 2014,
before me, the undersigned, a Notary Public, in and for the County and State
aforesaid, came Michael J. Brand as Managing Member of Angel Fire, LLC, a Kansas
limited liability company, personally known to me to be the same persons who
executed the within instrument of writing and such persons duly acknowledged the
execution of the same, for and on behalf and as the act and deed of said limited
liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official
seal the day and year above written.

Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-17)



Approved as to form:

Gary E. Rebenstorf, Director of Law

COPY

DRIVE APPROACH CLOSURE CERTIFICATE

Sedgwick County)
) SS
State of Kansas)

Angel Fire, LLC, a Kansas limited liability company, owner(s) of that certain real property to be known as **Southern Shores Addition, Wichita, Sedgwick County, Kansas**, is in the process of platting said property, and does hereby acknowledge that in accordance with the requirements of the platting process as set forth by the City of Wichita, any existing drive approaches on 55th St. S. in excess of the two allowed per said platting requirements shall be closed, and any existing drive approaches on Seneca St. in excess of the two allowed per platting requirements shall be closed.

This is to place on notice the owner(s) of the above-described property and subsequent owners thereof that, as a result of the above-cited platting requirements, said owner and subsequent owners thereof are responsible for seeing that such drive approach or approaches are removed and closed per City of Wichita specifications for such work, and that sufficient guaranty of such closure(s), in a form acceptable to the City of Wichita (e.g. – bond, cash, letter of credit, etc.) and/or acknowledgement that the City of Wichita may withhold the issuance of an occupancy permit for any future building construction, will be a pre-condition of the issuance of any future building permit for all development on the above-described property.

Signed this 27th day of May, 2014.

Angel Fire, LLC

By: 
Michael J. Brand, Managing Member

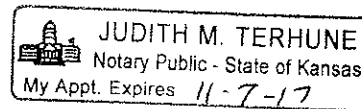
STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 27th day of May, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Michael J. Brand as Managing Member of Angel Fire, LLC, a Kansas limited liability company, personally known to me to be the same person who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed on behalf of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-17)



Approved as to form:

Gary E. Rebenstorf, City Attorney

COPY

RESTRICTIVE COVENANT

THIS DECLARATION made this 27th day of May, 2014, by Angel Fire, LLC, a Kansas Limited Liability Company, hereinafter called "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

SOUTHERN SHORES ADDITION

Lots 1 through 23, Block A
Lots 1 through 16, Block B

WHEREAS, Declarant is desirous in connection therewith that various provisions for the maintenance and responsibility for the maintenance be placed of record for Reserves "A", "B", "C", and "D", Southern Shores Addition, Wichita, Sedgwick County, Kansas.

NOW, THEREFORE, Declarant hereby declares and covenants:

1. That Reserves "A" and "B" are hereby reserved for open space, landscaping, entry monuments, berms, drainage purposes, gas lines and related appurtenances as confined to easement, and utilities as confined to easement.

Reserve "C" is hereby reserved for entry monuments, streets, landscaping, open space, drainage purposes, and utilities.

Reserve "D" is hereby reserved for open space, landscaping, pedestrian access to the public park, recreational uses, parking as confined to easement, an access drive as confined to right-of-way agreement, drainage purposes, and utilities as confined to easements.

Reserves "A", "B", "C", and "D", shall be owned and maintained by the homeowners association for the addition.

2. That a Homeowner's Association shall be formed and incorporated as a non-profit corporation under Kansas Statutes, at the Declarant's sole cost. Reserves "A", "B", "C", and "D", as designated on the plat of Southern Shores Addition, shall be deeded to the Homeowner's Association upon its incorporation or within 30 days thereafter.

3. That the declaration of covenants and other provisions of the Homeowner's Association being formed shall provide specific pertinent language requiring that the Homeowner's Association shall include the first or any other subsequent phase or phases for the maintenance of any and all common areas contiguous to Reserves "A", "B", "C", and "D", to Southern Shores Addition under the same scope of responsibility as the initial phase of development.

4. That the owners hereby grant an irrevocable easement to whichever appropriate governing body or authority has jurisdiction, to enter upon the Reserve, as defined, for the purposes of maintaining such Reserve. This easement is conditioned upon the following event or events happening:

A. That the Declarant or the Homeowners Association, as may be appropriate, has failed to maintain the reserve in a reasonable and prudent manner.
and,

B. That the appropriate governing body has given written notice to the Declarant or the Homeowners Association and neither entity has responded in initiating corrective action within thirty (30) days of such notice. If the governing body has taken action to maintain the reserve under this covenant, the Declarant or Homeowners Association shall pay promptly the costs expended. If the costs are not paid within thirty (30) days of the rendering of an account, the costs shall be considered an assessment against all lots in Southern Shores Addition, and shall be considered a lien thereon and be treated in the same manner as a special assessment.

This covenant shall be binding on the owner, their heirs, or successors or assigns and is a covenant running with the land and is binding on all successors in Lots in SOUTHERN SHORES ADDITION, Wichita, Sedgwick County, Kansas.

The covenants, conditions, and restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent of the City of Wichita. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas.

EXECUTED the day and year first written.

Angel Fire, LLC

By: 
Michael J. Brand, Managing Member

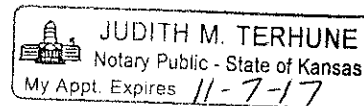
STATE OF KANSAS)
SEDGWICK COUNTY) SS:

BE IT REMEMBERED, that on this 27th day of May, 2014,
before me, the undersigned, a Notary Public, in and for the County and State
aforesaid, came Michael J. Brand as Managing Member of Angel Fire, LLC, a Kansas
limited liability company, personally known to me to be the same persons who
executed the within instrument of writing and such persons duly acknowledged the
execution of the same, for and on behalf and as the act and deed of said limited
liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official
seal the day and year above written.

Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-17)



Approved as to form:

Gary E. Rebenstorf, Director of Law

Published in The Wichita Eagle on June 27, 2014

ORDINANCE NO. 49-769

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

**BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.**

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2012-00022

Zone change request from MF-29 Multi-family Residential, GO General Office and LC Limited Commercial to TF-3 Two-family Residential on property described as:

Lots 1-7, Block B, Lots 1-23, Block A, and Reserves A and B, Southern Shores Addition, Wichita, Sedgwick County, Kansas.

Generally located on the Northwest Corner of Seneca and 55th Street South.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 24 day of June, 2014.

ATTEST:

Karen Sublett, City Clerk

Carl Brewer, Mayor

(SEAL)

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

Published in The Wichita Eagle on June 27, 2014

ORDINANCE NO. 49-770

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

**BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.**

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2013-00018

Zone change request from SF-5 Single-family Residential to TF-3 Two-family Residential on property described as:

Lots 8-16, Block B, Reserves C and D, Southern Shores Addition, Wichita, Sedgwick County, Kansas.

Generally located on the Northwest Corner of Seneca and 55th Street South.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 24 day of June, 2014.

ATTEST:

Karen Sublett, City Clerk

Carl Brewer, Mayor

(SEAL)

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

First Published in the Wichita Eagle on June 20, 2014

RESOLUTION NO. 14-168

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF **LATERAL 61, MAIN 3, SOUTHWEST INTERCEPTOR SEWER (WEST OF SENECA, NORTH OF 55TH STREET SOUTH) 468-84965** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF **LATERAL 61, MAIN 3, SOUTHWEST INTERCEPTOR SEWER (WEST OF SENECA, NORTH OF 55TH STREET SOUTH) 468-84965** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct **Lateral 61, Main 3, Southwest Interceptor Sewer (west of Seneca, north of 55th Street South) 468-84965**

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **Two Hundred Fifty-Two Thousand Dollars (\$252,000)** exclusive of interest on financing and administrative and financing costs, with **100** percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **June 1, 2014**, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

SOUTHERN SHORES ADDITION

Lots 1 through 24, Block A

Lots 1 through 16, Block B

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and or value: Lots 1 through 24, Block A, and Lots 1 through 16, Block B, **SOUTHERN SHORES ADDITION** shall each pay 1/40 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6 That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 17th day of June, 2014.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF
DIRECTOR OF LAW

First Published in the Wichita Eagle on June 20, 2014

RESOLUTION NO. 14-169

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING IMPROVING **STORM WATER SEWER NO. 683 (WEST OF SENECA, NORTH OF 55TH STREET SOUTH) 468-84964** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING **STORM WATER SEWER NO. 683 (WEST OF SENECA, NORTH OF 55TH STREET SOUTH) 468-84964** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve **Storm Water Sewer No. 683 (west of Seneca, north of 55th Street South) 468-84964**.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **Two Hundred Sixty-Seven Thousand Dollars (\$267,000)** exclusive of interest on financing and administrative and financing costs, with **100** percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **June 1, 2014**, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

SOUTHERN SHORES ADDITION

Lots 1 through 24, Block A

Lots 1 through 16, Block B

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis:

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value:

Lots 1 through 24, Block A, and Lots 1 through 16, Block B, SOUTHERN SHORES ADDITION shall each pay 1/40 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 17th day of June, 2014.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF
DIRECTOR OF LAW

First Published in the Wichita Eagle on June 20, 2014

RESOLUTION NO. 14-170

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING THE IMPROVEMENT OF **WATER DISTRIBUTION SYSTEM NUMBER 448-90634 (WEST OF SENECA, NORTH OF 55TH STREET NORTH)** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF **WATER DISTRIBUTION SYSTEM NUMBER 448-90634 (WEST OF SENECA, NORTH OF 55TH STREET NORTH)** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve **Water Distribution System Number 448-90634 (west of Seneca, north of 55th Street North)**.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **One Hundred Twenty-Five Thousand Dollars (\$125,000)** exclusive of interest on financing and administrative and financing costs, with **100** percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **June 1, 2014**, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

SOUTHERN SHORES ADDITION

Lots 1 through 24, Block A

Lots 1 through 16, Block B

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value:

Lots 1 through 24, Block A, and Lots 1 through 16, Block B, SOUTHERN SHORES ADDITION shall each pay 1/40 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 17th day of June, 2014.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK
(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF,
DIRECTOR OF LAW

First Published in the Wichita Eagle on June 20, 2014

RESOLUTION NO. 14-171

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON **DODGE** FROM THE NORTH LINE OF 55TH STREET SOUTH TO THE WEST LINE OF MAYWOOD AND ON **MAYWOOD** FROM THE WEST LINE OF DODGE, EAST TO THE EAST LINE OF THE PLAT AND ON **MAYWOOD COURT** FROM THE SOUTH LINE OF MAYWOOD, SOUTH TO AND INCLUDING THE CUL-DE-SAC; ON **DODGE COURT** (LOTS 12 THROUGH 17, BLOCK A), FROM THE EAST LINE OF DODGE, EAST TO AND INCLUDING THE CUL-DE-SAC; AND ON **DODGE COURT** (LOTS 18 THROUGH 23, BLOCK A) FROM THE EAST LINE OF DODGE, EAST TO AND INCLUDING THE CUL-DE-SAC AND THAT SIDEWALK BE CONSTRUCTED ON ONE SIDE OF DODGE AND MAYWOOD (WEST OF SENECA, NORTH OF 55TH STREET SOUTH) 472-85172 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON **DODGE** FROM THE NORTH LINE OF 55TH STREET SOUTH TO THE WEST LINE OF MAYWOOD AND ON **MAYWOOD** FROM THE WEST LINE OF DODGE, EAST TO THE EAST LINE OF THE PLAT AND ON **MAYWOOD COURT** FROM THE SOUTH LINE OF MAYWOOD, SOUTH TO AND INCLUDING THE CUL-DE-SAC; ON **DODGE COURT** (LOTS 12 THROUGH 17, BLOCK A), FROM THE EAST LINE OF DODGE, EAST TO AND INCLUDING THE CUL-DE-SAC; AND ON **DODGE COURT** (LOTS 18 THROUGH 23, BLOCK A) FROM THE EAST LINE OF DODGE, EAST TO AND INCLUDING THE CUL-DE-SAC AND THAT SIDEWALK BE CONSTRUCTED ON ONE SIDE OF DODGE AND MAYWOOD (WEST OF SENECA, NORTH OF 55TH STREET SOUTH) 472-85172 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct pavement on **Dodge** from the north line of 55th Street South to the west line of Maywood and on **Maywood** from the west line of Dodge, east to the east line of the plat and on **Maywood Court** from the south line of Maywood, south to and including the cul-de-sac; on **Dodge Court** (Lots 12 through 17, Block A), from the east line of Dodge, east to and including the cul-de-sac; and on **Dodge Court** (Lots 18 through 23, Block A) from the east line of Dodge, east to and including the cul-de-sac and that sidewalk be constructed on one side of Dodge and Maywood (west of Seneca, north of 55th Street South) 472-85172.

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **Five Hundred Four Thousand Dollars (\$504,000)** exclusive of interest on financing and administrative and financing costs, with 100 Percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **June 1, 2014**, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

SOUTHERN SHORES ADDITION

Lots 1 through 22, Block A

Lots 1 through 16, Block B

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 through 23, Block A, and Lots 1 through 16, Block B, **SOUTHERN SHORES ADDITION** shall each pay 1/39 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 1980 Supp. 12-6a01 et seq.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY E. REBENSTORF
DIRECTOR OF LAW

City of Wichita
City Council Meeting
June 17, 2014

TO: Wichita Airport Authority

SUBJECT: Michael's GSE Repairs, LLC
Commercial Operations Agreement
Wichita Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the commercial operations agreement.

Background: A commercial operations agreement authorizes a company to perform maintenance on ground service equipment (GSE) for commercial passenger air carriers and commercial cargo operators. Since 1996, Michael Gray has been an employee of a family-owned company, Gray Mechanical and Welding, where he performed ground service equipment repairs at Mid-Continent Airport. Mr. Gray has started a new company and is an owner of Michael's GSE Repairs, LLC (Michael's).

Analysis: Michael's desires to lease a facility located at 2163 Air Cargo Road, Suite B on Mid-Continent Airport. Michael's would occupy 2,879 sq. ft. of the facility, which has a total area of approximately 20,960 sq. ft. DHL Express Inc. and EagleMed, LLC occupy the remainder of the facility. The term of this agreement is month-to-month, effective June 17, 2014.

Financial Considerations: The facility rent for the use of the space is \$2.50 per sq. ft. The new annual revenue for the leased area is \$7,198.

Legal Considerations: The agreement has been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the commercial operations agreement and authorize the necessary signatures.

Attachments: Commercial Operations Agreement.

WICHITA MID-CONTINENT AIRPORT COMMERCIAL OPERATIONS AGREEMENT

This Operating Agreement ("Agreement") is made and entered into by and between The Wichita Airport Authority ("Authority") and Michael's GSE Repairs, LLC organized and existing under the laws of the State of Kansas ("Operator").

In consideration of the rights, privileges, and mutual obligations contained in this Agreement, Authority and Operator agree as follows:

1. Term and Cancellation Provisions

The term of this Agreement shall commence June 17, 2014, and shall continue on a month-to-month basis.

This Agreement may be cancelled by either party, without cause, by giving a 30-day written notice. In the event the Director of Airports determines that termination is necessary to protect public health, safety or welfare, this Agreement may be terminated by the Director of Airports upon such notice as the Director of Airports deems appropriate under the circumstances. Termination or expiration of this Agreement shall not relieve the parties of any liabilities or obligations hereunder which shall have accrued on or prior to the date of termination. Upon the termination of this Agreement, Operator shall cease forthwith all operations upon the Airport and shall pay in full all fees and other amounts payable to Authority as set forth in this Agreement, then due and owing.

2. Services Provided by Operator

Subject to all terms of this Agreement, the Operator is hereby granted a NON-EXCLUSIVE right to perform maintenance of ground support equipment for commercial passenger air carriers and commercial cargo operators using Wichita Mid-Continent Airport attached hereto as Exhibit "A". The Operator shall provide to and maintain with the Authority at all times, an up-to-date list of all commercial passenger air carriers and air cargo operators that it performs services for as authorized by this Agreement.

The Operator shall be solely responsible to comply with any federal, state or local regulations, statues and ordinances and shall be responsible to maintain permits or licenses required to perform welding on Airport Property throughout the Term of this Agreement and all approved extensions which may be applicable.

3. Operational Requirements

Operator shall provide such services as are necessary to adequately meet all demands for its services at the Airport and shall conduct such hours of business as may be necessary to provide this service. Such service shall be furnished on a fair, equal and non-discriminatory basis for all users thereof, and charges shall be fair, reasonable and non-discriminatory for each unit of sale or service. All of the services enumerated herein shall be limited to certificated commercial passenger air carriers and commercial cargo operators that have the authority from the appropriate regulatory department of the United States of America, or

other competent authority, to operate in and out of the Airport. It is understood and agreed that such commercial passenger air carriers and commercial cargo operators shall at all times have the right to provide any of the services herein provided for, for their own operations. None of the services which the Operator is authorized to perform under this Agreement shall involve the operation of aircraft by the Operator.

Operator shall maintain sufficient equipment, tools, accessories, and supplies, and employ a sufficient number of personnel to handle the operations and respond to customer inquiries and furnish good, prompt and efficient service adequate to meet all reasonable demands and needs of the business herein authorized. All equipment, tools, and vehicles to be used in the operation of Operator's business at the Airport will be in excellent, safe operating condition and will be kept in an orderly and clean manner at all times. All equipment and vehicles will be operated by Operator and its employees, agents, and/or representatives in a safe and orderly manner at all times. Upon objection from Authority to Operator concerning the operation of such equipment and vehicles, or the unsafe and unclean condition of the equipment and vehicles, Operator will immediately remedy the cause of the objection.

Questions or complaints regarding the quality of services, whether raised by users, Authority or otherwise, may be submitted to Operator for response. At Authority's request, Operator shall meet with the Authority to review any complaints or concerns and to promptly correct any deficiencies. The Authority's determination as to the quality of operation or services shall be conclusive, and curative measures shall be implemented by Operator as expeditiously as possible.

Failure on the part of the Operator to correct, modify or rectify any deficiencies within thirty (30) days, following written notice from the Authority, or to commence and diligently proceed to cure or remedy any such situation over a greater period of time than what would be reasonably required, may be a material breach of this Agreement and a cause for the exercise of any remedies, including the cancellation of the Agreement.

Operator will not block any areas used for ingress and egress by Airport traffic and will not interfere with the activities of Authority, its agents, employees or other Airport tenants.

Operator must, at its own expense, maintain in force any and all licenses and permits required for the legal operation of all aspects of this Agreement.

4. Leased Premises

Authority does hereby lease to Operator the Premises containing 2,879 sq. ft. of space located in the Wichita Mid-Continent Airport ("Airport") 2163 Air Cargo Road, Suite B, (Premises) as reflected on Exhibit "A", attached hereto and made a part hereof. It is understood and agreed that if Authority requires the Premises for Airline purposes or Authority purposes, that Authority may reclaim the leased Premises and will attempt to find other space acceptable to Operator.

5. Facility Rental

Rental of the Premises shall be at the rate of \$2.50 per sq. ft. for an annual rental of \$7,197.50, payable in monthly installments of \$599.79.

6. Utilities

Operator shall pay all costs for utility services (whether for installation, service, administration, connection, or maintenance thereof) used by Operator at or upon the Premises with no responsibility or expense accruing or inuring to Authority, including all permits, licenses or authorizations necessary in connection therewith. Such payments by Operator shall be made directly to the utility supplier or service provider, except that if such utilities should be supplied by the Authority, then in this event, Operator will pay those costs to Authority within thirty (30) days after receipt of Authority's invoice. Authority agrees that any such costs invoiced to Operator will be based on the rates charged to Authority by utility supplier, plus reasonable capital and administrative recovery costs.

7. Payment Procedures

Operator shall make all payments to the Wichita Airport Authority, and in a form acceptable to Authority. Automated Clearing House (ACH) direct deposit is preferred. Bank account and routing information is available upon request. Payments made by check shall be delivered or mailed to:

Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67209

or such other address as designated by Authority in writing.

8. Late Payments

In the event Operator fails to make payment within ten (10) days of the dates due as set forth in this Agreement, then Authority may charge Operator a monthly service charge of one and one-half percent (1.5%) for any such overdue amount, plus reasonable attorneys' fees, court costs and administrative fees incurred by Authority in attempting to obtain payment.

9. Handling Arrangements

In the event Operator agrees to provide services for any portion of the operations of other aircraft operators operating on Mid-Continent Airport which do not have an agreement with Authority, Operator shall provide Authority advance written notice of such proposed activities, including a description of the type and extent of services to be provided.

10. Parking

The Operator and its employees shall have no right hereunder to park vehicles at the Airport except in common parking areas designated by the Authority for employees as reflected on Exhibit "A", attached hereto and made a part hereof.

11. Insurance

The Operator agrees to maintain appropriate liability insurance during the Term hereof, equal to or in excess of the following amounts:

<u>Type of Coverage</u>	<u>Limits Per Occurrence</u>	<u>Limits General Aggregate</u>
Commercial General Liability	\$2,000,000	\$5,000,000
Automobile Liability	\$1,000,000	
Airport Premises Liability	\$2,000,000	

In addition, the Operator shall maintain a Worker's Compensation and Employer's liability policy for limits of not less than the statutory requirement for Worker's Compensation, and \$500,000 Employer's Liability. Worker's Compensation obligations may be met by statutory waiver.

Operator agrees that upon notice by the Authority, the minimum levels and types of insurance required by this paragraph may be increased within the bounds of commercial reasonableness to the amount that may be required to provide coverage of the events of this Section.

Operator agrees, prior to the commencement of the Agreement, to provide Authority with copies of all policies or certificates evidencing that such insurance is in full force and effect, and stating the terms thereof, and shall name the City of Wichita and the Authority as additional insureds.

Operator shall be solely responsible for obtaining insurance policies that provide coverage for losses of Operator-owned property. Authority shall not be required to provide such insurance coverage or be responsible for payment of Operator's cost for such insurance.

12. Subrogation of Insurance

Authority hereby waives any and all rights of recovery against Operator for or arising out of damage or destruction of the building, or the Premises, or any other property of Authority, from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of such policies, whether or not such damage or destruction shall have been caused by the negligence of Operator, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver. The Authority does not waive subrogation on any self insured risk.

Operator hereby waives any and all rights of recovery against Authority for or arising out of damage to or destruction of any property of Operator from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of Authority, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver. The Authority does not waive subrogation on any self insured risk.

13. Maintenance

Operator, at its sole expense, shall at all times keep and maintain said Premises and the fixtures and appurtenances thereto in a clean and sightly condition, free of trash, debris and obstructions.

Operator shall maintain and keep in repair at its own expense the interior of said Premises, keeping the same in proper condition, including but not limited to replacement of all broken glass, painting, ballast and light bulb replacement, and any other minor repairs required to keep the Premises in proper condition.

Authority shall be responsible for maintenance of the building exterior, structure, electrical and mechanical systems, roof, and ramp, except for damage caused by Operator and not considered "normal wear and tear". For purposes of this Agreement, normal wear and tear shall be defined as the physical deterioration which occurs in the normal course of the use for which a property is intended, without negligence, carelessness, accident or abuse of the Premises.

14. Portable Storage Containers/Structures

Unless specifically approved in writing, and under conditions specified by Authority, Operator shall not place or allow to be placed within the staging area, any type of portable storage container, trailer, unit, box, or barrel which is used to store merchandise and/or equipment and supplies. Authority will not unreasonably withhold approval of such container if such is of a temporary nature, or at the discretion of Authority.

Unless specifically approved in writing, and under conditions specified by Authority, Operator shall not place or allow to be placed within the staging area, any type of portable or temporary structure or device.

15. Representation

It is understood and agreed that Operator shall at all times be deemed to be an independent contractor to the Authority. Nothing in this Agreement shall be construed or considered to create the relationship of employer and employee between the parties. Operator is not an agent or employee of the Authority, and shall not be entitled to any of the benefits of Authority's employees.

All persons providing customer service and ground handling services pursuant to this Agreement shall represent themselves as representatives of an independent contractor. Under no circumstances shall any of Operator's personnel represent themselves as employees of the Authority. No person providing customer service and ground handling services shall be an agent or employee of the Authority, and shall not be entitled to any of the benefits of Authority's employees.

16. Assignment and Subletting

Operator shall not assign, sublet, mortgage or otherwise transfer, in whole or in part, any of the rights granted in this Agreement without the prior written approval of the Authority.

17. Reservations

Further, Operator agrees to be diligent and to do all those things necessary and proper to serve the public fairly and in such manner that will not reflect discredit upon the Authority or cause the Authority loss or damage, and without limiting the foregoing, Operator covenants and agrees to furnish good, prompt and efficient service adequate to meet all demands for such service at the Airport, and shall furnish such service on fair, equal and nondiscriminatory basis to all users thereof.

18. Impositions

Operator shall, during the term of this Agreement, bear, pay and discharge, before the delinquency thereof, any and all lawful impositions, including all lawful taxes and assessments imposed on the Premises or Operator's possessory right therein.

19. Third Party Rights

It is specifically agreed between the parties that it is not intended by any of the provisions of any part of this Agreement to create the public or any member thereof third-party beneficiary statutes hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

20. Damage to Airport Facilities

Operator shall be responsible for any and all damage to the Airport caused by the negligence of Operator, its agents, employees, contractors, subcontractors or invitees including, but not limited to, damage to terminal areas, ramp and taxiway areas, engine run-up areas, runways, hangar facilities and any and all areas where any activities are performed by Operator.

21. Surrender of Possession

Operator shall yield and deliver to Authority possession of the Premises at the expiration of this Agreement in good condition in accordance with its express obligations hereunder. Operator shall deliver the staging area in good order and condition, including cleaning and hauling away all supplies and trash.

Operator, at Operator's expense, shall remove during the term hereof or at the expiration of such term all trade fixtures, equipment and personal property placed by Operator on or about the staging area, subject to Operator's repairing any damage thereto caused by such removal and subject to any valid lien which Authority may have thereon for unpaid fees.

In the event Operator does not remove all of said property within ten (10) days after the termination of this Agreement, the same shall be considered abandoned and Authority may dispose of said property without any further responsibility or liability to Operator. Operator shall be liable to Authority for the costs of removal and disposal of said property, and for an additional administrative expense equal to twenty percent (20%) of the costs incurred.

22. Rules and Regulations

Operator, its agents and employees, shall be subject to any and all applicable rules, regulations, standard operating procedures, orders and restrictions which are now in force or which may hereafter be adopted by the Authority, the City of Wichita, Kansas, or the Transportation Security Administration, in respect to the operation of the Airport; and shall also be subject to any and all applicable laws, statutes, rules, regulations or orders of any governmental authority, federal or state, lawfully exercising authority over the Airport or Operator's operations conducted hereunder.

Authority shall not be liable to Operator for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority as in this section provided, nor shall Operator be entitled to terminate this Agreement by reason thereof unless the exercise of such authority shall so interfere with Operator's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas.

Operator shall hold Authority harmless for any and all breaches of Federal Aviation Administration, Transportation Security Administration, or Authority's security rules or regulations caused by the Operator, its agents or employees, except to the extent caused by Authority.

23. Non-discrimination EEO/AAP

The Operator agrees that it will not discriminate or permit discrimination against any person on the basis of race, color, sex, religion, national origin or ancestry, disability, or age, except where age is a bona fide occupational qualification, in its operations or services being provided at the Premises, and its use or occupancy of the Premises under this Agreement. The Operator agrees to comply with all applicable provisions of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375 and 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Kansas Act Against Discrimination, K.S.A. 44-1000, et seq.; the Code of the City of Wichita Section 2.12.950; and any laws, regulations or amendments as may be promulgated thereunder, including any Ordinance of the City of Wichita, Kansas, presently, existing or hereafter enacted, which pertains to civil rights and equal employment opportunity.

24. FAA Requirements

Authority and Operator further agree that the requirements of the Federal Aviation Administration set out below are approved by both parties, and if applicable, Operator agrees to comply with all FAA requirements with respect to its operations, use of the Airport and this Agreement.

- (a) The Operator, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose

involving the provision of similar services or benefits, the Operator shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

- (b) The Operator, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Operator shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
- (c) The Operator assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Operator assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Operator assures that it will require that its covered suborganizations provide assurances to the Operator that they similarly will undertake affirmative action programs, and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
- (d) It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.
- (e) Operator agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, that Operator may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.
- (f) Authority reserves the right (but shall not be obligated to Operator) to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Operator in this regard.

- (g) Authority reserves the right further to develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as it sees fit, regardless of the desires or views of Operator, and without interference or hindrance.
- (h) Authority reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Operator from erecting, or permitting to be erected, any building or other structure on the Airport which, in the opinion of Authority, would limit the usefulness of the Airport or constitute a hazard to aircraft.
- (i) During time of war or national emergency Authority shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.
- (j) It is understood and agreed that the rights granted by this Agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the Airport.
- (k) There is hereby reserved to Authority, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the air space above the surface of the Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on or about the Airport.
- (l) This Agreement shall become subordinate to provisions of any existing or future agreement or regulatory obligation between the Authority and the United States of America or any agency thereof relative to the operation, development or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

25. Modifications for Granting FAA Funds

In the event that the Federal Aviation Administration requires modifications or changes to this Agreement as a condition precedent to granting of funds for the improvement of the Airport, Operator agrees to consent to such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required to enable the Authority to obtain said Federal Aviation Administration funds, provided that in no event shall such changes materially impair the rights of Operator hereunder or materially increase its obligations.

26. Airport Security Program

Operator must obtain Airport Security Identification and Access Media (I.D. Media) for its employees, subcontractors, suppliers, agents, and representatives requiring access to the sterile areas, secured air operations area (AOA), and security identification display area (SIDA), or other secured areas as may be identified in the Airport Security Program, and pay any related costs associated with this privileges as set forth under this Section. With respect to the issuance, maintenance, and administration of I.D. Media, the Operator shall pay or cause to be paid to the Authority all such charges as may be established from time to time by the Authority. Such costs may include, but are not limited to: (i) the initial issuance of I.D. Media; (ii) the replacement of lost or stolen I.D. Media; (iii) administrative costs with respect to those I.D. Media not returned to the Authority.

Said I.D. Media will be valid as set forth under the Airport Security Program, and must be returned to the Airport Public Safety Division, at 2193 Air Cargo Road within twenty-four (24) hours after expiration, suspension, and/or termination of this Agreement. Said I.D. Media will be valid for no longer than the period of this Agreement. The Operator shall be responsible for requesting the Authority issue I.D. Media to all employees or other persons who are authorized access to Security Identification Display Areas ("SIDA") on the Airport as designated in the Airport Security Program. In addition, Operator shall be responsible for the immediate reporting of all lost or stolen I.D. Media and the immediate return of the I.D. Media of Operator's personnel transferred from the Airport, or terminated from the employ of Operator.

Operator covenants that it will at all times maintain the integrity of the Airport Security Program and comply with all applicable provisions of 49 CFR Parts 1500, 1544, 1546, 1548, and 1550 as promulgated, and that it will always maintain the security of the Airport, Premises, and/or any AOA access which Operator maintains. The Authority shall have the right to require the Operator to conduct background investigations and to furnish certain data on such employees or other persons before the issuance of I.D. Media, which data may include the fingerprinting of any and all of its employees, subcontractors, suppliers, agents, and/or representatives. Operator also hereby agrees that it shall be responsible for any and all of the actions of its employees, subcontractors, suppliers, agents, and/or representatives and shall provide any and all necessary escorts, as outlined in the Airport Security Program. Operator hereby agrees that it will immediately implement any and all security changes that are directed either directly or indirectly by the Transportation Security Administration ("TSA"), Federal Aviation Administration ("FAA"), or Authority. Operator further agrees to rectify any security deficiency or other deficiency as may be determined as such by the Authority, or the Department of Transportation ("DOT"), the FAA, or the TSA, or any other federal or state agency with jurisdiction. In the event Operator fails to remedy any such deficiency, the Authority may do so at the sole cost and expense of Operator. The Authority reserves the right to take whatever action is necessary to rectify any security deficiency or other deficiency. When the Authority takes actions to remedy deficiencies of any kind, it shall be done in a reasonable and cost-conscious manner.

Should Operator, its employees, subcontractors, suppliers, agents, and/or representatives cause any security violations, and should Authority be cited for a civil fine or penalty for

such security violation, Operator agrees to reimburse Authority for any monetary civil fine or penalty, which may be imposed on Authority by FAA or TSA, however, nothing herein shall prevent the Operator from contesting the legality, validity or application of such fine or penalty to the full extent Operator may be lawfully entitled. Operator may have I.D. Media/access privileges immediately suspended and/or revoked by Authority for failure to adhere to the Airport Security Program, or for failure to return all I.D. Media within the time-frames specified herein. Such actions may also be grounds for termination of this Agreement for non-compliance at the sole discretion of Authority, if such failure by Operator is not cured by Operator within thirty (30) days after receiving notice from Authority of such failure.

Before the Operator shall permit any employee to operate a motor vehicle of any kind or type on the AOA (unless such employee is escorted by a Authority-approved escort), the Operator shall ensure that all such vehicle operators possess current, valid, and appropriate Kansas driver's license, I.D. Media, and Vehicle Ramp Permit. Operator company vehicles prominently displaying a permanent company name and/or logo on vehicles and equipment are excluded from the requirement of displaying a Vehicle Ramp Permit.

The Operator agrees that its vehicles, cargo, goods, and other personal property are subject to being inspected and searched when attempting to enter or leave and while on the AOA. Operator acknowledges and understands that the foregoing requirements are for the protection of users of the Airport and are intended to reduce incidents of cargo tampering, aircraft sabotage, thefts, and other unlawful activities at the Airport.

27. Environmental

- (a) Operator shall have the right at its expense to conduct such environmental testing respecting the Premises as is necessary to satisfy itself that the Premises are environmentally sound and free of hazardous or toxic substances or waste of any kind, not caused by the Operator. In the event such testing is positive for such pre-existing substances, and Authority or a third party fails to remediate within 120 days of written notice from Operator of such positive test results, Operator shall have the right to terminate and cancel this Agreement without any liability for either party hereunder. If the Operator terminates the lease under these provisions after the commencement of construction, Operator shall restore the Premises in a manner reasonably acceptable to Authority.
- (b) The Operator hereby covenants that it will not cause or permit any hazardous substances to be placed, held, located or disposed of, on, under or at the Premises, other than in the ordinary course of business and in compliance with all applicable laws.
- (c) In furtherance and not in limitation of any indemnity elsewhere provided to the Authority hereunder, the Operator hereby agrees to indemnify and hold harmless the Authority and the City of Wichita from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the Authority or the City of Wichita

by any person or entity for or arising out of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during the term of this Agreement of any hazardous substance (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws, or any other applicable statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning, any hazardous substance) if such presence, escape, seepage, leakage, spillage, discharge, emission was caused by the Operator, or persons within the control of the Operator, its officers, employees, agents, and/or licensees, or if such hazardous substance was owned by, or located on the Premises by, the Operator (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release).

- (d) If, during the term of this Agreement, the Operator receives any notice of (i) the happening of any event involving the use (other than in the ordinary course of business and in compliance with all applicable laws), spill, release, leak, seepage, discharge or cleanup of any hazardous substance on the Premises or in connection with the Operator's operations thereon or (ii) any complaint, order, citation or notice in connecting with Operator's conduct of its business at the Airport with regard to air emissions, water discharges, or any other environmental, health, or safety matter affecting the Operator (an "Environmental Complaint") from any persons or entity (including, without limitation), the United States Environmental Protection Agency (the "EPA") or the Kansas Department of Health and Environment ("KDHE"), the Operator shall immediately notify the Authority in writing of said notice.
- (e) The Authority shall have the right, but not the obligation, and without limitation of the Authority's other rights under this Agreement, to enter the Premises or to take such other actions as deemed necessary or advisable to inspect, clean up, remove, resolve or minimize the impact of, or to otherwise deal with, any hazardous substance or environmental complaint following receipt of any notice from any person, including, without limitation, the EPA or KDHE, asserting the existence of any hazardous substance or an environmental complaint pertaining to the Premises or any part thereof which, if true, could result in an order, suit or other action against the Operator and/or which, in the reasonable judgment of the Authority, could jeopardize its interests under this Agreement. If such conditions are caused by circumstances within the control of the Operator or if such circumstances result from a hazardous substance owned by, or located on the Premises by, the Operator (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release) then in such event, Authority shall allow Operator to perform any actions required under applicable environmental laws with respect to such environmental complaint or hazardous substances within a reasonable time under the circumstances, to include consideration for the safety and convenience of the Authority's tenants and the traveling public. In the event Operator fails or refuses to take such actions, Authority shall take such actions and all reasonable costs and expenses incurred by the Authority in the exercise

of any such rights shall be payable by the Operator, within 30 days of written demand by the Authority.

- (f) If Operator defaults in connection with its obligations pursuant to this Section 27, and fails to correct such default promptly following receipt of written notice of such default from Authority or any agency, the Operator at the request of the Authority shall periodically perform (at the Operator's expense) an environmental audit and, if reasonably deemed necessary by the Authority, an environmental risk assessment (each of which must be reasonably satisfactory to the Authority) of the Premises, or the hazardous waste management practices and/or hazardous waste disposal sites used by the Operator with respect to the Premises. Such audit and/or risk assessment shall be conducted by an environmental consultant satisfactory to the Authority. Should the Operator fail to perform any such environmental audit or risk assessment within 90 days of the written request of the Authority, the Authority shall have the right, but not the obligation, to retain an environmental consultant to perform any such environmental audit or risk assessment. All costs and expenses incurred by the Authority in the exercise of such rights shall be payable by the Operator on demand.
- (g) Neither Operator nor Authority shall install or permit to be installed in the Premises friable asbestos, electrical equipment containing polychlorinated biphenyls (PCBs), or any substance containing asbestos and deemed hazardous by federal or state regulations applicable to the Premises and respecting such material. The Operator shall defend, indemnify, and save the Authority and the City of Wichita harmless from all costs and expenses (including consequential damages) asserted or proven against the Operator by any person, as a result of the presence of said substances, and any removal or compliance with such regulations, if said substance was installed by the Operator, or persons within its control.
- (h) Subject to any limitations or restrictions imposed by the Kansas Budget Law or Cash Basis Law, the Authority hereby agrees to indemnify and hold harmless the Operator from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the Operator by any person or entity for, arising out of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises during the term of this Agreement and the period prior to the term of this Agreement of any hazardous substance (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws, or any other applicable statute, law, ordinance, code, rule, regulation, order of decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning any hazardous substance) unless such presence, escape, seepage, leakage, spillage, discharge, emission or release was caused by the Operator, or persons within the control of the Operator, its officers, employees, agents, business invitees and/or licensees, or if such hazardous substance was owned by, or

placed upon the Premises by, the Operator (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release except to the extent such was caused by the Authority).

28. Indemnity

Operator shall protect, defend and hold Authority and the City of Wichita and its officers, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court cost and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or the Operator's use or occupancy of the Premises or the acts or omissions of Operator's officers, agents, employees, contractors, subcontractors, or licensees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of the City of Wichita or Authority's officers, agents, employees, contractors, subcontractors, or licensees, regardless of where the injury, death or damage may occur. The Authority shall give to Operator reasonable notice of any such claim or actions. The provisions of this section shall survive the expiration or early termination of this Agreement.

Authority shall protect, defend and hold Operator and its officers, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or the Authority's operation of the Airport or the acts or omissions of Authority's officers, agents, employees, contractors, subcontractors, or licensees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of the Operator. The Operator shall give to Authority reasonable notice of any such claim or actions. The provisions of this section shall survive the expiration or early termination of this Agreement.

29. Authority's Right to Develop Airport

Authority reserves the right to further develop or improve the Airport and all landing areas and taxiways as it may see fit, regardless of the desires or views of Operator and without interference or hindrance.

- (a) Operator acknowledges that the Authority is seeking governmental approvals for the expansion of the Airport. Operator agrees to cooperate with Authority in connection with Authority's efforts to obtain such approvals. From and after the date of execution of this Agreement, Operator agrees (i) to support the Authority's efforts to obtain such approvals; and (ii) to execute any document(s) or instrument(s) reasonably requested by Authority in order to assist Authority in obtaining such approvals, provided that Operator shall not be required to bear any expense in connection therewith and the Operator shall not be deemed an agent of the Authority as a result of any such signature.

- (b) This Agreement shall vest in Operator no right, title or interest whatsoever in or to any of the Authority lands or any adjacent lands or roadways, other than the right of using the same for the purpose of this Agreement and upon the terms and conditions set forth.

30. Construction Inconvenience

Operator agrees that from time to time during the Term, Authority shall have the right to initiate Airport construction, including but not limited to terminal facilities, roadways, parking areas for aircraft and ground vehicles, runways, and taxiway areas. Operator agrees that it shall not hold Authority, including its officers, agents, employees and representatives, liable for damages, of any nature whatsoever to it due to the Airport construction except to the extent due to the negligence or willful misconduct of Authority, its officers, directors, agents or employees. Operator shall hold Authority harmless for all damages arising out of or caused by inconveniences and/or interruptions of its activities at the Airport, and personal injury, including death, and property damage due to the Airport constructions.

31. No Airport Hazard

Operator expressly agrees to prevent any use of the Premises from which it operates which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute a hazard.

32. Contract Interpretation

- (a) Invalid Provisions. It is expressly understood and agreed by and between the parties hereto that in the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained; provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either the Authority or the Operator in their respective rights and obligations contained in the valid covenants, conditions or provisions in this Agreement.
- (b) Non-Waiver. The waiver by Authority of any breach of the Operator of any term, covenant, provision, or condition hereof shall not operate as a waiver of any subsequent breach of the same or a waiver of any breach of any other covenant, term, provision, or condition hereof, nor shall any forbearance by Authority to seek a remedy for any breach by Operator be a waiver by Authority of its rights and remedies with respect to such or any subsequent breach of the same or with respect to any other breach.
- (c) Entire Agreement. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

- (d) Applicable Law. This Agreement and the terms and conditions herein contained shall at all times be governed, interpreted and construed in accordance with the laws of the State of Kansas, and the laws, rules and regulations of the City.
- (e) Successors. All covenants, representations, stipulations, and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.
- (f) Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing or waiving any rights of ownership enjoyed by the Authority in the Airport; except as specifically provided in this Agreement; or impairing, exercising or defining governmental rights and the police powers of the Authority.
- (g) Relation to Other Operators. This Agreement is separate and distinct from, and shall be construed separately from any other agreement between Authority and any other Operators at the Airport. The fact that such other agreement contains provisions, which differ from those contained in this Agreement, shall have no bearing on the construction of this Agreement.
- (h) Authority to Execute. The individuals executing this Agreement on behalf of Operator personally warrant that they have the full authority to execute this Agreement on behalf of the Operator for whom they are acting herein.
- (i) Headings. The sections and paragraph headings are inserted only as a matter of convenience and for references, and in no way define, limit or describe the scope or intent of any provision of this Agreement.
- (j) Consent. Whenever the consent or approval of either party is required under this Agreement, such consent or approval shall not be unreasonably withheld or delayed.

33. Notices

Notices to Authority provided for herein shall be sufficient if sent by registered or certified mail, postage prepaid, addressed to:

The Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67277-0130

Notices to Operator provided for herein shall be sufficient if sent by registered or certified mail, postage prepaid, addressed to:

Michael's GSE Repairs, LLC
1224 West Bones Circle
Wichita, KS 67217-5166

Mike's Cell: 316-880-3814
Rebecca's Cell: 316-308-7607

or to such other respective addresses as the parties may designate in writing from time to time.

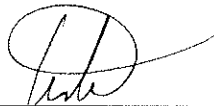
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By _____
Karen Sublett, City Clerk

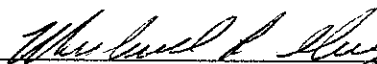
By _____
Carl Brewer, President
"AUTHORITY"

By  _____
Victor D. White, Director of Airports

ATTEST:

MICHAEL'S GSE REPAIRS, LLC

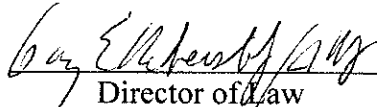
By _____

By  _____

Title _____

Title Owner / Partner
Michael Gray
"OPERATOR"

APPROVED AS TO FORM:

 _____ Date: 6-2-14
Director of Law

RECEIVED

JUN 11 2014

W.A.A.

PARKING

SUITE B
2,879 sq.ft.



MICHAEL'S GSE REPAIRS
2163 AIR CARGO ROAD

WICHITA MID-CONTINENT AIRPORT

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

DISCLAIMER:

THE INFORMATION ON THIS DRAWING IS THE BEST AVAILABLE AND CURRENT AS OF THE DRAWING DATE. CHANGES AND/OR CORRECTIONS MAY HAVE BEEN MADE AFTER THAT DATE.

DATE	DR. BY	SCALE	SHEET
5/30/14	H.G.O.	1" = 20'	1 of 1

D:\Drawings\216-Buildings\Air Cargo Road\2163-DHL Warehouse\Michael's GSE Repairs 2014.dwg, Site, 5/30/2014 4:27:48 PM

**NORTH CARGO APRON
COMMON USE**

GATE B

AIR CARGO ROAD



SUITE B

**LOADING
DOCK**

PARKING

SITE MAP

2163 AIR CARGO ROAD

WICHITA MID-CONTINENT AIRPORT

**THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS**

DATE	DR. BY	SCALE	SHEET
5/30/14	H.G.O.	1" = 60'	1 of 1